



**REPUBLIC OF KENYA
IN THE COURT OF APPEAL OF KENYA
AT NAKURU**

Civil Appli Nai 254 of 2005

BETWEEN

MUSA KIPKOROR ARAP BARINGILA APPLICANT

AND

MANSOOR NANDLAL RESPONDENT

**(An application for injunction in an intended appeal from
a ruling and order of the High Court of Kenya at Kericho**

(Mr. Justice Kimaru) dated 21st July, 2005

in

H.C.C.P &A NO. 12 OF 2004)

RULING OF THE COURT

Musa Kipkoror Arap Baringila, the applicant, brings this application under **rule 5(2)(b)** of the Court of Appeal Rules asking for a stay of the ruling and orders of Kimaru, J. given on 21st July, 2005 and an injunction restraining the respondent from selling, charging, leasing, transferring or in any way from interfering with Plot Numbers 28, 59 and 77; Plot Numbers Kericho/Kipchimchim/1451, Plot Number Kericho/Kipchimchim/1603, Plot Number 35, Kericho Municipality; Plot Number 1 Londiani Township; Plot Number 4 Londiani Township; Saving Accounts Kenya Commercial Bank, Kericho, Savings Account Post Office Savings Bank, Kericho, and Savings Account, Standard Chartered Bank, Kericho, pending the filing, hearing and determination of the intended appeal.

The genesis of the dispute between the parties is a written will made on 15th November, 2003 by the late Nandlal Chirenik Mankilal. By the will the deceased appointed the applicant the executor of the will. On 7th May, 2004, the applicant was issued with the grant of probate of the said will. However, on an application by Mansoor Nandlal, the respondent herein and the son of the deceased, the High Court of Kenya at Nakuru revoked the grant and appointed the respondent the administrator of the estate of the deceased.

In revoking the grant the learned Judge held, inter alia, that:-

“.....It is not disputed that the respondent is the sole beneficiary of the deceased’s estate. He is therefore entitled to inherit the entire estate of the deceased which is comprised of several properties and accounts held in various banks.”

and also that:-

“.....It is clear that the petitioner has failed in his duty as the executor of the will of the deceased. Apart from mistreating the sole beneficiary to the deceased’s estate, the petitioner has failed to render account of the incomes received from the estate of the deceased. He has also failed to apply for confirmation of grant of probate which he was required to do within a period of six months after the issuance of the said grant of probate. The petitioner’s conduct as regard the administration of the deceased’s estate is not befitting of an administrator as envisaged by section 83 of the Law of Succession Act. The petitioner has not acted impartially and in the interest of the beneficiary. He has instead developed interest to convert part of the estate of the deceased to be his property.”

It is against that ruling that the applicant intends to appeal and in relation to which he has lodged this application. It is trite, though we must reiterate, that for the applicant to obtain the orders he seeks in this application, he must, first, show that he has an arguable appeal and, secondly, that his appeal, if successful, would be rendered nugatory, unless he is granted a stay.

The applicant has demonstrated to us that he intends to canvass in the intended appeal the choice of the law applicable in the dispute relating to the estate of the deceased. The applicant avers that the law applicable is Islamic Sharia Law, but, the respondent contends otherwise. The applicant also will argue that as a Muslim he was a beneficiary of the estate of the deceased, though the will is silent on it. Mr. Njirani, counsel for the applicant, says these are substantial points of law. With respect we agree with him. Our considered opinion is that the intended appeal is not frivolous but indeed arguable.

In this regard, therefore, it is in the best interest of justice that the estate of the deceased be preserved pending the determination of the intended appeal. It is obvious that the intended appeal, if successful, would be rendered nugatory if the property is disposed of, wasted or depleted before the determination of the intended appeal.

In the result this application is granted as prayed for in the motion lodged in this Court on 8th September, 2005. We make no order as to costs.

Dated and delivered at Nakuru this 3rd day of March, 2006.

P. K. TUNOI

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JUDGE OF APPEAL

E. M. GITHINJI

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JUDGE OF APPEAL

W. S. DEVERELL

.....

JUDGE OF APPEAL

I certify that this is a true
copy of the original.

DEPUTY REGISTRAR