



**IN THE MATTER OF THE ESTATE OF ALEXANDER KAMERO NJUGUNA**

**JIDRAPH KAMERO NJUGUNA**

**GRACE MUGURA KAMERO**

**MARY MUTHONI NGURU**

**JOYCE WANJIRU MUTIRE ..... APPLICANTS**

**VERSUS**

**HILDA NJERI KAMERO ..... RESPONDENT**

**R U L I N G**

This is an application for stay of proceedings pending appeal. It is made under the inherent power of the Court, **Sections 47, 48 and 49 of the Law of Succession Act and Rule 59 of the Probate and Administration Rules.**

By the application, the Applicant seeks orders that –

- 1. ...(*Spent*).**
- 2. *Pending the hearing and determination of this application, the succession proceedings in relation to the estate of the above named Alexander Kamero Njuguna who died on 9<sup>th</sup> May, 2005, that is to say Succession Cause No. 90 of 2009 in the Limuru Senior Principal Magistrate’s Court, be stayed.***
- 3. *pending the hearing and determination of this appeal, the succession proceedings in relation to the estate of the above named Alexander Kamera Njuguna who died on 9<sup>th</sup> May, 2005, that is to say Succession Cause No. 90 of 2009 in the Limuru Senior Principal Magistrate’s Court, be stayed.***
- 4. *In any event, this Honourable Court is hereby pleased to stay the distribution of the estate of Alexander Kamero the Njuguna and/or any other dealing with the said estate pending the hearing and determination of this application and the appeal herein.***

The application is supported by the annexed affidavit of Jidraph

Kamero Njuguna and is based on the grounds that –

- (a) *The grant herein was irregularly issued to Hilda Njeri Kamero.***

**(b) The Applicant claims an interest in the estate of Alexander Kamero Njuguna as one of the beneficiaries thereof.**

**(c) The Applicant, in conjunction with other interested persons, has lodged an appeal against the ruling and orders of the Honourable MS. M.A. MURAGE, Senior Principal Magistrate delivered on the 1<sup>st</sup> day of November, 2011 dismissing the Applicant's claims.**

**(d) The grant is now pending confirmation and the estate is at risk of being distributed before this appeal is heard and determined thereby denying the Applicants and opportunity to have their grievances addressed.**

**(e) It the estate of the deceased is administered in the present form, the Applicant will be disinherited.**

During the oral canvassing of the application, Mr. Nyanga appeared for the Applicant while Mr. Mugalo appeared for the Respondent. After considering the pleadings and hearing both Counsel, I note that there are two main areas of contention in this matter. One relates to an alleged trust whereby the deceased was entrusted with the suit property on trust for some of his siblings. The second issue is that the lower Court directed that the Objector should have followed a declaratory suit that the land had been held in trust other than by way of objection in a Succession Case.

A copy the Land Certificate in respect of the suit property has been produced in evidence. It was issued on 12<sup>th</sup> January, 1973 and certifies that **“Alexander Kamero Njuguna (ID. No. given) of Lari Location is now registered as the absolute proprietor of the land comprised in the above mentioned title subject to the entries in the Register relating to the land and to such of the overriding interests set in Section 30 of the Registered Land Act as may for the time being subsist and affect the land.”** There is no indication on this Land Certificate or anywhere else that the deceased was registered as a trustee for anybody. On the contrary, he was registered as the absolute proprietor of the land in issue. For anyone to assert that he was registered as a trustee, it will be necessary to seek such a declaration from another forum but not a Succession Court.

I am of the opinion that, *prima facie*, the intended appeal is not merited and it will only serve to keep the beneficiaries of the estate out of their rights as long as the appeal lasts. For these reasons, I decline to grant the stay sought in this application and hereby strike it out.

Costs in the Cause.

Orders accordingly.

**DATED and DELIVERED at NAIROBI this 28<sup>th</sup> ay of February, 2012.**

**L. NJAGI**  
**JUDGE**