



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KISII

SUCCESSION CAUSE NO.1 OF 2017

ESTATE OF SAUL NYARERU (Deceased)

ANGELINE MORAA NYARERU.....APPLICANT/RESPONDENT

VERSUS

ESTHER GACHOKI NYARERU.....RESPONDENT/PETITIONER

RULING

The applicant by an application dated the 19/10/2019 brought under sections 47 and 50 of the Law of Succession Act, Rule 73 of the Probate and Administration rules and Sections 3 (a) & 6 of the Civil Procedure Act seeks the following order;

(1) Spent

(2) That the court be pleased to stay all further proceedings in the cause pending the lodgment hearing and determination of the intended appeal by the applicant

(3) That the Hon. Court be pleased to grant leave to the applicant to appeal to the court of appeal against the Ruling and an order made on the 27/9/2019.

(4) That costs be in the application.

The application is supported by grounds (a) to (g) stated on the face of the application and the affidavit of Mr. Jeremiah Onsare Soire.

The Respondent though served did not respond to the application.

In the affidavit in support Mr. Soire states that after the ruling the applicant expressed hard satisfaction with the Ruling and instructed him to proceed with the appeal process. That following the said instructions he lodged a Notice of appeal which was signed by the Deputy Registrar on the 7/10/2019. That he knows that the practice in succession matters now is that leave must be obtained. He further depones that the applicant is apprehensive that during the pendency of the intended appeal there is the risk of the decree/order of the court made on the 27/9/2019 being executed which may not only render the appeal nugatory under mere academic exercise but also highly prejudice the rights and interests of the applicant and hence the need of staying the proceedings or further execution of the order.

I have considered the affidavit in support and the provisions of the law that guide me in the application under consideration.

The applicant has a right of appeal. Leave is therefore granted to the applicant to appeal against the court's decision dated 27/9/2019.

On the issue of stay of proceedings, the Court of Appeal in **Civil Application No. Nai 139 of 2001** held that when considering an application for a stay of proceedings the court shall consider the facts of each case as presented. Order 42 rule (6) guides when a court can grant a stay of the proceedings. The application was filed without delay. The applicant has not explained the loss she will suffer in any affidavit. The affidavit in support of the application was not sworn by the applicant. Mr. Soire's affidavit does not explain the loss either. The applicant too has not offered any security. Though the application was filed timeously the applicant has not sufficiently demonstrated that she is entitled to any stay order.

Apart from a Notice of appeal the applicant has not even bothered to file a draft of the memorandum of appeal for this court to consider whether she has arguable appeal that warrants a stay of the proceedings.

I therefore find no merit in the application on the limb of granting a stay of the proceedings. I decline to stay the proceedings as sought. The applicant is however granted leave to appeal within 30 days from date of Ruling. No order as to costs.

Dated, signed and delivered this 1st day of November 2019.

R.E OUGO

JUDGE

In the presence of;

Mr. Soire	For the Applicant
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Respondent	Absent
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Ms. Rael	Court Clerk
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