



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO.358 OF 2010

LUCY WANGARI NJOGU.....PLAINTIFF

VERSUS

PETER LEONARD MWANGI.....1ST DEFENDANT

CONSOLIDATED BANK OF KENYA LTD2ND DEFENDANT

CYRUS GIATARI KATHURI.....3RD DEFENDANT

EQUITY BANK LIMITED4TH DEFENDANT

RULING

1. This is the notice of motion dated 17th December 2021 brought under article 159 of the Constitution of Kenya 2010 and all enabling provisions of the law.
2. It seeks orders;
 1. *Spent*
 2. *Spent*
 3. *That pending the hearing and determination of Nairobi Court of Appeal Civil Application Number E436/2021 this honourable court be pleased to extend and/reinstate the status quo orders in respect to the status of the property known as LR 16217/34.*
 4. *That this honourable court do grant any other orders it deems fit and just in the circumstances of this case.*
 5. *That costs of this application be provided for.*
3. The grounds are on the face of the Applicant and are set out in paragraphs 1 to 10.
4. The Application is supported by the affidavit of Lucy Wangari Njogu, the Plaintiff/Applicant sworn on the 20th December 2021.
5. The application is opposed. There is a replying affidavit sworn by Peter Leonard Mwangi, the 1st Defendant/Respondent on the 14th February 2022. It is his case that this application is an abuse of the court process as it introduces new issues.
6. The Plaintiff/Applicant claims to be in occupation of the suit property an issue that was not raised during the trial. He prays that the application be dismissed with costs.
7. The 2nd Defendant/Respondent, filed grounds of opposition dated 16th February 2022. There is also a replying affidavit by Lilian Ntongai, the Recoveries Officer with the 2nd Defendant/Respondent on the 4th March 2022.
8. It is the 2nd Defendant's/Respondent's case that this application is frivolous, vexatious, scandalous and an abuse of the court process.

That the same is tantamount to forum shopping as there is a similar application pending before the Court of Appeal in Civil Application No E346 of 2021 Nairobi seeking similar orders.

9. The 3rd Defendant/Respondent filed a replying affidavit sworn on the 4th February 2022. It is his case that the Plaintiff/Applicant has not been in possession of the suit property hence she will suffer no irreparable loss if these orders are not granted. He prays that the application be dismissed with costs.

10. I have considered the notice of motion and the affidavit in support. I have also considered the responses thereto. The issue for determination is whether this application is merited.

11. Judgment in this matter was delivered on 14th October 2021 and a stay of execution of forty five (45) days was granted.

12. It appears the Plaintiff/Applicant filed the present application and Honourable Justice Ogutu Mboya granted orders of status quo. These are orders that the Plaintiff/Applicant seeks that they be extended.

13. It is not in dispute that the Plaintiff/Applicant has since appealed against the judgment dated 14th October 2021. Civil Appeal E436 of 2021 and E738 of 2021 are pending in the Court of Appeal.

14. I find that upon delivery of the Judgment on 14th October 2021 this court became *functus officio*.

15. The notice of motion is fatally and incurably defective having been brought under Article 159 of the Constitution, 2010. I agree with the 2nd Defendant's/Respondent's position that Section 1A, 1B and 3A of the Civil Procedure Act cannot be invoked to salvage it.

16. I also find that this honourable court lacks jurisdiction to entertain, hear and/or determine this application given the provisions of Article 165 (6) of the Constitution.

17. I find no merit in this application and the same is dismissed with costs to the 1st, 2nd and 3rd Defendants/Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 24TH DAY OF MARCH 2022.

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L. KOMINGOI

JUDGE

IN THE PRESENCE OF:-

MS NJOKI FOR MR. OKATCH FOR THE PLAINTIFF

MR. MURIITHI FOR THE 2ND DEFENDANT

NO APPEARANCES FOR 1ST, 3RD AND 4TH DEFENDANTS

STEVE - COURT ASSISTANT