



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**HIGH COURT CIVIL APPEAL NO. 115 OF 2019**

**BRIDGET RIARA EUSTUS.....1<sup>ST</sup> APPELLANT**

**EDWIN MARANGU.....2<sup>ND</sup> APPELLANT**

**WASHINGTON KIMATHI.....3<sup>RD</sup> APPELLANT**

**ROSEMARY IGOKI.....4<sup>TH</sup> APPELLANT**

**ENID NCHABIRA.....5<sup>TH</sup> APPELLANT**

**LINET NGEETA.....6<sup>TH</sup> APPELLANT**

**VERSUS**

**ZAKAYO THIURU MWARANIA.....1<sup>ST</sup> RESPONDENT**

**EUSTUS KIRIMI M'ABURI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By an application dated 20<sup>th</sup> September 2019 the Appellants/applicants sought that this court issues an order of stay of execution of the ruling delivered 19<sup>th</sup> September 2019 in Nkubu SPM CC No. 22 of 2015 pending the hearing and determination and appeal herein. They also prayed for cost of application.
2. The application dated 20<sup>th</sup> September 2019 was supported with the grounds on the face of the application and the supporting affidavit of Bridget Riara Eustus sworn on 20<sup>th</sup> September 2019. The Appellants had applied for stay of execution, review and/or setting aside of exparte judgment in the Lower court file where the 1<sup>st</sup> Respondent had obtained an exparte judgment against the 2<sup>nd</sup> Respondent who is the husband and father of the Appellants/Applicants. The Trial court dismissed that application on the ground of inordinate delay and the fact that the applicants were strangers to the suit and therefore had no locus standi to bring an application in the suit.
3. The applicants/appellants were aggrieved by the ruling of the trial magistrate and they filed the appeal herein concurrently with the application seeking for orders of stay. The application was heard by way of written submissions.
4. I have considered the application, the grounds and the supporting affidavits as well as the replying affidavit and respective submissions and having perused the proceedings in the lower court file as well as the judgment and the ruling against which this appeal has been filed there are several disturbing concerns regarding the whole process from the manner the 1<sup>st</sup> Respondent allegedly lend money to the 2<sup>nd</sup> Respondent; the fact that the proceeding herein proceeded exparte; the fact that the advocate who prepared the agreement between the defendant and the 2<sup>nd</sup> respondent is the same one representing the 2<sup>nd</sup> respondent in the suit in the Lower court in disregard to the provisions of Section 9 of the Advocates Act.
5. Whether the agreement is not unconscionable considering the capacity of the 2<sup>nd</sup> Respondent to lend money and charge interest ?
6. The 2<sup>nd</sup> Respondent purported to retain title deeds belonging to the 1<sup>st</sup> Respondent on account of monies advanced and seeks to sell the pieces of land for which titles he has had custody as collateral and yet the same were not charged for that purpose.
7. The fact that the 2<sup>nd</sup> Respondent allegedly gave colossal sums of money in succession to the 1<sup>st</sup> Respondent using title deeds to matrimonial property as security without seeking spousal consent of the 1<sup>st</sup> Appellant and without involving the local administration and

even the land control board .

8. In seeking to sell the 2 parcels of land as collateral for monies advanced to the 1<sup>st</sup> Respondent whether the 2<sup>nd</sup> Respondent has carried out a valuation to establish the value of the 2 properties vis-à-vis the money allegedly owed to him by the 1<sup>st</sup> Respondent.

9. The Fact that the 1<sup>st</sup> Respondent allegedly borrowed monies from the 2<sup>nd</sup> Respondent using the 2 title deeds when the same was in dispute in High Civil case no. 31 of 2010 (now ELC 8 of 2019) raises suspicion that the transaction between the Respondents might have been a ploy to defeat the cause of justice and disinherit the applicants.

10. In the circumstances I do find that although the applicants/appellants were not parties in the lower court suit the finding in the lower court suit affects them materially and therefore they need to be given audience in court to ventilated their grievances. The proceedings in Nkubu SPMCC No. 22 of 2015 shall therefore be stayed pending hearing and determination of Meru ELC No. 8 of 2019 and the appeal herein.

11. Costs of the application shall be in the cause.

**HON A. ONG'INJO**

**JUDGE**

**RULING DELIVERED, DATED AND SIGNED IN COURT ON 20<sup>TH</sup> DAY OF FEBRUARY 2020.**

**In the presence of :**

CA:

1<sup>ST</sup> APPELLANT:

2<sup>ND</sup> APPELLANT:

3<sup>RD</sup> APPELLANT:

4<sup>TH</sup> APPELLANT: Mr Mutunga Advocate holding brief for Mr Maranya Advocate

5<sup>TH</sup> APPELLANT: for Applicants/Appellants

6<sup>TH</sup> APPELLANT:

1<sup>ST</sup> RESPONDENT: Mr Kiogora Arithi Advocate for Respondents – No appearance

2<sup>ND</sup> RESPONDENT:

**HON A. ONG'INJO**

**JUDGE**