



**REPUBLIC OF KENYA**

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

**CIVIL APPEAL NO. 210 OF 2015**

LINET KWATUCHA WEKU ..... APPELLANT

VERSUS

CORNELIUS W. WAMALWA ..... 1 ST RESPONDENT

CITY COUNCIL OF NAIROBI..... 2<sup>ND</sup> RESPONDENT

**RULING**

This is an application by way of Notice of Motion under Sections 1A, 1B and 3A of Civil Procedure Act and Order 42 Rule 6 (1) of the Civil Procedure Rules seeking a stay of execution of the order of the lower court dated 30<sup>th</sup> April, 2015 pending the hearing and determination of the appeal.

The dispute in the lower court related to occupation and ownership of a house No. HFO – 10 Huruma Estate Nairobi owned by the 2<sup>nd</sup> respondent. Both the appellant and the 1<sup>st</sup> respondent claim equal rights to the said house. The lower court made an order that the said house was allocated to the 1<sup>st</sup> respondent. The appellant disputed that position hence this application.

The application is dated 28<sup>th</sup> June, 2016 but the memorandum of appeal was filed timeously, that is on 8<sup>th</sup> May, 2015. Both counsel have filed submissions to the application. The appellant has filed what appears to be receipts and acknowledged by the 2<sup>nd</sup> respondent that she had been paying rent and is in occupation.

She has a right of appeal and there is not a serious challenge to the fact that she is in occupation of the said premises. I am inclined to allow stay of execution of the lower court order. The record of appeal however has to be filed within 30 days from the date of this ruling. Each party shall bear their own costs.

***Dated, signed and delivered at Nairobi this 28<sup>th</sup> Day of March, 2017.***

**A. MBOGHOLI MSAGHA**

**JUDGE**