



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO 56 OF 2014

JANE WANJIKU.....APPELLANT

VERSUS

PAUL KAMANDE SHEM

JULIUS NJOGU KAGWAINI

PATRICK KIMANI FRANCIS.....RESPONDENTS

R U L I N G

1. This ruling concerns two applications filed by the Appellant. The first is **notice of motion dated 08/01/2016** seeking the main order of stay of execution of the decree of the lower court pending disposal of the appeal. The second application is the **notice of motion dated 21/11/2016** seeking two main orders, to wit, that warrants of arrest issued by the lower court (apparently in execution of decree) on 21/11/2016 be lifted; and that the title deed of L.R. LOC 7/KAHARO/1420 be deposited in court as security for stay of execution of decree instead of deposit of KShs 185,000/00.
2. The notice of motion dated 09/01/2016 was drawn and filed by **Messrs. Macharia Gacharia & Associates, Advocates**, on behalf of the Appellant. The second application (notice of motion dated 21/11/2016) was drawn and filed by **Messrs. Ochieng, Kahul & Velo, Advocates** on behalf of the Appellants. Both applications are opposed by the Respondent.
3. I have read the supporting and opposing affidavits. I have also given consideration to the submissions of the learned counsels appearing. For the Appellant Miss Velo appeared. She was from the firm **Ochieng Kokul & Velo, Advocates**. Mr. Bwonwonga from the firm **Bwonwonga & Co., Advocates**, appeared for the Respondent.
4. Mr. Bwonwonga at the outset took issue with the standing of **Messrs. Ochieng Kokul and Velo, Advocates**. He submitted that they were not properly on record for the Appellant. He pointed out that **Messrs. Macharia Gicharia & Associates** were not only on record for the Appellant in the lower court, but were also the advocates who filed the appeal for the Appellant and who drew and filed the Appellant's first application dated 08/01/2016. He submitted further that there was no leave granted to **Messrs. Ochieng Kohul & Velo, Advocates** under **Order 9, Rule 9** of the **Civil Procedure Rules, 2010** and no such leave has ever been sought.
5. Miss Velo replied that such leave was not necessary and claimed that they had filed a notice of appointment of advocates.
6. I have perused the court record and have not seen the notice of appointment of advocates claimed by

Miss Velo. Even if there were such notice of appointment of advocates, I doubt it would be sufficient. What ought to have been filed was a notice of change of advocates in order to give the existing advocates for the Appellant notice that they had been divested of the brief.

7. As for leave of the court required by Order 9, Rule 9 of the Rules where judgment has already been passed, that judgment would be in the matter then before the court, in this case the appeal, not the judgment appealed against. So, *Messrs. Ochieng Kokul & Velo, Advocates* would not have required leave to come on record in the appeal as no judgment had been passed in the appeal. However, they needed to file and serve a notice of change of advocates under **Order 9, Rules 5 and 6** of the Rules. Without such notice they are not properly on record, and *Messrs. Macharia Gacharia & Associates* are considered the advocates for the Appellant until disposal of the appeal.

8. As to the merits of the applications, it is to be noted that on 04/07/2016 the court granted the Appellant interim conditional stay of execution. She never met the condition and the interim stay was lifted. The title she has now offered as security does not belong to her, and she has not filed any document duly executed by the owner to the effect that he or she agrees to deposit in court his or her title for security herein as required by **Order 42, Rule 6(2) (b)** of the Rules.

9. There being no such security offered by the Appellant, the notice of motion dated 08/01/2016 must fail. It is hereby dismissed with costs to the Respondent.

10. As for the notice of motion dated 21/11/2016, the same was drawn and filed by advocates who are not properly on record for the Appellant. It is hereby struck out with costs to the Respondent.

11. Those will be the orders of the court.

DATED AND SIGNED AT MURANG'A THIS 14TH DAY OF DECEMBER 2017

H P G WAWERU

JUDGE

DELIVERED AT MURANG'A THIS 15TH DAY OF DECEMBER 2017