



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NYAHURURU**

**ELCA NO. 17 OF 2019**

**MARY WAMBUI MUNYORI.....APPELLANT**

**VERSUS**

**GABRIEL NJUGUNA KANYUA (the legal representative of**

**MARIA WAMBUI KANYUA).....RESPONDENT**

**RULING**

1. By a notice of motion dated 19<sup>th</sup> July, 2021 brought under **Order 42 Rule 6 of the Civil Procedure Rule 2010 and all other enabling provisions of the law**, the Appellant sought the following orders

*a. ....spent*

*b. ....spent*

*c. ....spent*

*d. That pending the hearing and determination of the intended appeal before the Court of Appeal or further orders of this honourable court, there be stay of execution of the judgment of this appeal delivered on 24<sup>th</sup> June, 2021.*

*e. That pending the hearing and determination of the intended appeal before the Court of Appeal or further orders of this honourable court, the status quo prevailing during the hearing in Engineer SPMC ELC No. 1 of 2017 be maintained.*

*f. That the cost of this application be provided for.*

2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the Appellant on 19<sup>th</sup> July, 2021 together with the exhibits thereto. The Appellant contended that a stay was necessary to prevent her eviction from the portion of the suit property she was occupying pending the hearing and determination of her intended appeal to the Court of Appeal.

3. The Respondent filed a replying affidavit sworn on 21/9/2021 in opposition to the application on several grounds. First, it was contended that the application was merely intended to delay her enjoyment of the fruits of the judgment. Second, it was contended that there was no pending appeal since the Appellant had failed to lodge an appeal within the prescribed period. Third, the parties had always occupied separate and distinct portions of the suit property since 1963 and that the Appellant shall not suffer any prejudice if the stay was declined. Fourth, that the Appellant had failed to satisfy the requirements for stay of execution. Fifth, that in any event, the Appellant shall still be able to recover the entire suit property in the event of her intended appeal being successful.

4. When the application was listed for directions, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Appellant filed her submission on 18<sup>th</sup> October, 2021 whereas the Respondent's submissions were filed on 19<sup>th</sup> January, 2022.

5. The court has considered the material and submissions on record on the issue of stay of execution pending appeal to the Court of Appeal. The decision sought to be stayed is the judgment of this court dated and delivered on 24<sup>th</sup> June, 2021 which merely dismissed the Appellant's appeal against the judgment of the Magistrate's Court in Engineer SPMCC No. 1 of 2017. The court is thus of the opinion that the dismissal order made on 24<sup>th</sup> June, 2021 is not capable of being stayed since it did not order any of the parties to do or to refrain from doing anything capable of being stayed. See **Western College of Arts and Applied Sciences v Oranga & Others [1976] KLR 63**.

6. The court is also not satisfied that the Appellant stands to suffer the risk of eviction as alleged or at all. The court has perused the decree of the trial court in Engineer SPMCC No. 1 of 2017. The trial court did not issue an eviction or removal order against the Appellant at all. On the contrary, the trial court having found that the parties had peacefully occupied their respective portions of the suit property since 1963 simply decreed that the same status shall be maintained. None of the parties was to move and give way to the other.

7. Although the Appellant's advocate submitted that a stay or *status quo order* was necessary in order to prevent alienation of the suit property during the pendency of the intended appeal, there is no material on record to demonstrate that the Respondent intends to alienate any portion of the suit property. In fact, there is no allegation in the Appellant's supporting affidavit to the effect that the Respondent might alienate the suit property during the pendency of the appeal. Accordingly, the court is not satisfied that the Appellant has made out a case for the grant of the orders sought.

8. The upshot of the foregoing is that the court finds no merit in the Appellant's notice of motion dated 19<sup>th</sup> July, 2021. Accordingly the same is hereby dismissed with no order as to costs. It is so ordered.

**RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 20<sup>TH</sup> DAY OF JANUARY, 2022.**

**In the presence of:**

Mr. Nderitu Komu for the Appellant

Ms. Muigai holding brief for Mr. Gakuhi Chege for the Respondent

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**Y. M. ANGIMA**

**ELC JUDGE**