



THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
MISC. APPLICATION NO. E002 OF 2022

SAID ABDI GONJOBE.....PLAINTIFF

VERSUS

MARY JOMOO ESEKON.....DEFENDANT

RULING

1. This application is dated 17th February, 2022. It seeks the following orders:

1. That this honourable court be pleased to allow the applicant fill (sic) an appeal against the ruling dated 23/11/2021 by the honourable E. NGIGI PRINCIPAL MAGISTRATE ISIOLO LAW COURT in ELC NO 6 OF 2019 out of time.
2. That this honourable court be pleased to order stay of execution of the orders issued by the principal magistrate in ELC case no. 6 of 2019 herein pending the hearing and determination of this applicant (sic).
3. That the cost of this application be provided for.

2. The application is supported by the affidavit of **SAID ABDI GONJOBE**, the applicant sworn on 17th February, 2022 and has the following grounds:

- a) That the hounorable E NGIGI principal magistrate ordered me to pay a throw away cost of Ksh. 30,000/= to the defendant despite the fact that she has never attended hearing of this case even a single day since it was filed in court.
- b) That my advocate filed a notice of appeal and a memorandum of appeal in court on 17th December 2021.
- c) That when he filed the same he was informed that there is no network to generate a receipts for payment of court fees.
- d) That he was advised by the court clerk that he leave the copies with him who will once the network resume generate a receipt for payment for the court fees and make a call to him
- e) That on 20th December 2021, my advocate made a call to the said court clerk who informed him that the network had not yet resumed.
- f) That he proceeded on Christmas leave and resumed office on 5th of January 2022.
- g) That he went back to court and was informed that the court clerk had not resumed from his holiday and the file could not be traced.
- h) That when the court clerk resumed from his leave, he retrieved the court file from the lower court bundles on 11th January 2022 and the memorandum of appearance received with the lower court file (sic).
- i) That my advocate had not refused to file this appeal in time but the blame lies squarely with the court.

3. Having considered the application at this exparte stage, I do note that prayer No. 2 seeks a stay of execution. The apposite provision in the Civil Procedure Rules which is Order 42 Rule 6 requires that security be deposited before an order for stay of execution can be granted. As the court hears the application, I will direct that the applicant deposits the apposite security with court within 30 days of today.

4. The following orders are issued:

- a) This application is to be served upon the respondent within 14 days of today
- b) Stay of execution in terms of prayer 2 is granted on condition that the applicant will deposit with court as security a sum of 50,000/= within 30 days of today FAILING which this conditional stay will automatically lapse
- c) The application will be heard inter-partes on 21/3/2022.

DELIVERED IN CHAMBERS THIS 21ST DAY OF FEBRUARY, 2022 IN THE PRESENCE OF:

COURT ASSISTANT: DENGE

APPLICATION BE HEARD EXPARTE – PARTIES NOT PRESENT

HON. JUSTICE P.M. NJORGE

JUDGE