



**REPUBLIC OF KENYA**

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

**CIVIL CASE NO.48 OF 2011**

**JOHN WESONGA SAMBULA.....PLAINTIFF**

**VERSUS**

**JULIAS MUTHONI NJOROGE.....DEFENDANT**

**RULING**

The applicant brings this application under order 42 rule 6 and order 51 rule 1 of the civil procedure rules.

The applicant asks for stay of execution and or implementation of this Court's judgement delivered on 15/3/2015 pending the hearing and final determination of the applicant's appeal filed on the Court of Appeal at Kisumu as No.36 of 2015.

Among the applicant's grounds for seeking the stay is that the applicant is the immediate owner of suit land confirmed in title Number East Bukusu/South Kanduyi/465 which is adjacent to the plaintiff's land. In her supporting Affidavit she calls herself immediate owner of the suit land. Mrs. Chungelene Counsel for the applicant argues that if these orders are not granted, the intended appeal shall be rendered nugatory. She admits that the suit land has been transferred to the applicant's son during the pendency of the suit.

The respondent in opposing the suit stated that the applicant has transferred the suit to a third party who was a party to the suit. That the applicant later transferred the land to her son one Moses Waweru Njoroje on 20/12/2013. It was argued that the applicant has been busy putting this land out of reach of the Court. It was argued that she has dirty hands. That she has left herself where she has no interest in the suit. Further that the applicant has nothing to lose. Finally it is argued that the application is not merited and is meant to steal a match and is an abuse of the process of the Court.

The applicant has on her own admission transferred the suit land during the pendency of this suit. From the annexed memorandum of appeal to the Court of appeal, the applicant is attacking this Court's judgement in regard to her land East Bukusu/South Kanduyi 464 and the respondent's 465. She has extinguished her title subject to the appeal while the appeal is pending. She has as a matter of fact rendered her own appeal nugatory by extinguishing her title subject of the appeal.

Asking for a stay of execution of this Court orders and therefore relying on the filed appeal No.36 of 2015 when she now has no interest in the suit land is clearly an abuse of the process of the Court.

I agree with the respondent, the applicant's hands are tainted, she is now a stranger to the suit land and she now has nothing to lose in this application and also in the appeal. The application is not merited. It is dismissed with costs.

**DATED and DELIVERED at BUNGOMA this 29<sup>th</sup> day of July, 2015**

**S. MUKUNYA**

**JUDGE**