



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT AT ISIOLO

MISCELLANEOUS APPLICATION NO. 001 OF 2021

ESTHER MICHUKI KAUNGURU.....PLAINTIFF

-VERSUS-

NANCY NKUENE MUTHUIA.....1ST DEFENDANT

MARTIN LUBEKE.....2ND DEFENDANT

RULING

1. This application is dated 10/2/2022 and seeks orders:

1. THAT the Honourable Court do adopt the consent dated 9th February, 2022 and filed on 10th February, 2022 effectively placing the firm of **KEVIN OUMA & CO. ADVOCATES** for the Applicant
2. THAT this Honourable Court do adopt the Notice of Withdrawal dated 9th February, 2022 withdrawing the Application dated 16th December, 2021 and filed on 20th February, 2022 as an order of this court.
3. THAT this Honourable Court be pleased to grant the applicant extension of time to file appeal against the Judgement/Decree of the Chief Magistrate in ISIOLO ELC NO. 17 OF 2016 delivered on 27th July, 2021.
4. THAT this Honourable court be pleased to Order stay of execution of the judgement/Decree of the Chief Magistrate in ISIOLO ELC NO. 17 OF 2016 delivered on 27th July, 2021 herein pending the hearing and determination of this application.
5. THAT the Honourable Court do grant stay of execution of the Judgement/Decree of Chief Magistrate in Isiole ELC. 17 of 2016 delivered on 27th July, 2021 herein pending the filing, hearing and determination of Applicant's Intended appeal.
6. THAT pending the inter-partes hearing of this application an Order be issued for maintenance of the currently prevailing status quo in respect to PLOT NO. 190 KULAMAWE, ISIOLO to mean that the orders issued pursuant to the judgement dated and delivered on 27th July, 2021, respectively shall not be implemented in Lands Office and or on the ground.
7. THAT the costs of this Application be provided for.

2. It is supported by the affidavit of Esther Michuki the applicant and has the following grounds:

- a) THAT I had instructed the Firm of M/S KIOGORA MUGAMBI & CO. to file an appeal against the Judgment of the Honourable Trial Magistrate.
- b) THAT the said Firm failed and/or refused to file the Appeal within the stipulated period as required by Law.
- c) THAT I was not privy to this information and upon realization for the same I proceeded to instruct the Firm of M/S OTIENO A. & CO. to file an Appeal against the Judgment of the Trial Magistrate in order for me to obtain justice.
- d) THAT since the stipulated timeline and upon realization and having worked as an Associate in the said firm further advised that we needed leave of the court to file an Appeal out of time and proceeded to file a Misc. application which was registered as ISIOLO MISC. APPLICATION NO. E001 of 2021.
- e) THAT the firm of M/S OTIENO A & CO. upon realizing that he said matter was against the firm of M/S MAITAI RIMITA &

CO. and having worked as an Associate in the said firm further advised me that conflict of interest may arise and requested me to look for another Advocate to represent me.

f) THAT I then proceeded to instruct the Firm of M/S KEVIN OUMA & CO. instructed them to file an Appeal against the Judgement of the Trial Magistrate

g) THAT the actions and inactions by my former Counsel should not be meted upon me.

h) THAT I have a good appeal which I believe has high chances of success.

3. On 14/2/2022 Mr. Nyenyire holding brief for M/S Rimita for the 1st Respondent told the Court that he required 14 days to respond to the application. That being the case, in order to preserve the suit property, Mr. Muchiri for the applicant asked the court to grant prayers 2 and 4. Mr. Nyenyire told the Court to grant prayers 2 and 4 as he had no objection to apposite orders being granted.

4. Because by consent, the parties have waived the deposit of security by the applicant and have also agreed that prayer 2 can be granted, I issue the following orders:

a) Prayers 2 and 4 in the application are hereby granted

b) The respondents are granted 14 days to respond to the application

c) The Applicant is directed to serve the 2nd respondent with the orders issued by the court today within 10 day of today.

d) All parties are directed to come to court for directions on 7/3/2021 by consent of advocates present in court.

WRITTEN AND DELIVERED IN OPEN COURT THIS 14TH DAY OF FEBRUARY, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Muchiri for the Applicant

Nyenyire for the 1st respondent

HON. JUSTICE P. M. NJOROGE

JUDGE