



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO.2 OF 2021**

**PETER NDAMBIRI NJAGI.....APPLICANT**

**=VERSUS=**

**QUASIM HIRSI KARAH.....1<sup>ST</sup> RESPONDENT**

**FARAH HASSAN ABDULLAHI.....2<sup>ND</sup> RESPONDENT**

**AMINA ABDULLAHI.....3<sup>RD</sup> RESPONDENT**

**MOHAMED ABUBAKAR MOHAMED.....4<sup>TH</sup> RESPONDENT**

**RULING**

1. This is the Notice of Motion application dated 6<sup>th</sup> May 2021 brought under Order of the Civil Procedure Rules, Section 1A, 1B and 3A 63(e), 79G and 95 of the Civil Procedure Act, Article 259 of the Constitution of Kenya and all enabling provisions of the law.

2. It seeks orders;

**1. Spent**

**2. Spent.**

**3. That this honourable court be pleased to grant the Applicant leave to file and/or lodge an appeal out of time against the decision delivered on the 30<sup>th</sup> March 2021 by the honourable Principal Magistrate, honourable Mr. Kagoni E. A declining to set aside the exparte orders of 27<sup>th</sup> August 2020.**

**4. That this honourable court be pleased to grant an order of stay of execution of the orders made on 27<sup>th</sup> August 2020 by the honourable Kagoni E. A. in Nairobi CMCC No 3073 of 2010 pending hearing and determination of the intended appeal.**

**5. That upon the grant of leave to appeal the memorandum of appeal filed herewith be deemed as duly filed subject to payment of the requisite fees.**

**6. That the costs of this application be paid by the Respondents.**

3. The grounds are on the face of the application and are set out in paragraphs 1 to 19.

4. The application is supported by the affidavit of Peter Ndambiri Njagi the Applicant herein sworn on the 6<sup>th</sup> May 2021.

5. The application is opposed. There is a replying affidavit sworn by Qasim Hirsi Karah, the 1<sup>st</sup> Respondent herein sworn on the 17<sup>th</sup> may 2021.

6. On the 15<sup>th</sup> June 2021, the court with the consent of the parties directed that the notice of motion be canvassed by way of written submissions.

7. I have considered the notice of motion and the affidavit in support. I have also considered the response thereto and the written submissions.

8. It is not in dispute that the issue between the parties is in regard to ownership and title to the suit property. These are issues which ought to be interrogated by the court by hearing all the parties.

9. I find merit in this application and grant orders in terms of prayer 3, 4 and 5 of the notice of motion on condition that the Applicant do pay throw away costs to the 1<sup>st</sup> and 2<sup>nd</sup> Respondents of Kshs. 15,000 within twenty one (21) days from the date of this ruling. The costs of this application be borne by the Applicant.

It is so ordered.

**DATED, SIGNED AND DELIVERED NAIROBI THIS 24<sup>TH</sup> DAY OF MARCH 2022.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Applicant

**Ms Nganyi for Mr. Khaemba for the Respondents**

Steve- Court Assistant