



THE REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT ISIOLO

MISC. APPLICATION NO. E001 OF 2021

ESTHER MICHUKI KAUMBURU.....APPLICANT

VERSUS

NANCY NKUENE MUTHUIA.....1ST RESPONDENT

MARTIN LUBERE2ND RESPONDENT

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 Kelvin Ouma and 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 December, 2021 together with the Notice of withdrawal of application dated 10th 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 Judgment/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 ISIOLO ELC NO. 17 OF 2016 delivered on 27th July, 2021 herein pending the filing, hearing and determination of the 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 Judgment dated and delivered on 27th July, 2021 respectively shall not be implemented in the Lands Office and or on the ground.
7. THAT the costs of this Application be provided for.

2. The application is supported by the applicant's affidavit sworn on 10/2/2022 and has the following grounds:

- a. THAT I had instructed the Firm of M/S KIOGORA MUGAMBI & CO. to file an appeal against the Judgement 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 of 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 had already expired the said Law Firm 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 the 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 my (sic) arise and requested me to look for another Advocate to represent me.

f. THAT I then proceeded to instruct the Firm of M/S Kelvin Ouma & CO. and 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. During inter-partes hearing on 21/3/2022 the parties intimated that the application was not opposed.

4. In the circumstances, I issue the following orders:

a. Prayers 3, 5 and 6 are granted, by consent of the parties.

b. Costs shall be in the cause.

c. Applicant to file and serve a Memorandum of Appeal and a record of appeal within 21 days of today.

d. Directions on 6/6/2022.

DELIVERED IN OPEN COURT AT ISIOLO THIS 21ST DAY OF MARCH, 2022 IN THE PRESENCE OF:

Court Assistant: Balozi

Muchiri for the applicant

M/S Otieno for the 1st respondent

HON. JUSTICE P. M. NJOROGE

JUDGE