



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT NAIROBI**  
**ELC. CASE NO. 923 OF 2012**

SIMON MUSILI MUSYOKA.....1<sup>ST</sup> PETITIONER  
PETER KITAVI MWEI..... 2<sup>ND</sup> PETITIONER  
MICHAEL NZIOKA MULIU.....3<sup>RD</sup> PETITIONER  
(ON THEIR OWN BEHALF AND ON BEHALF OF 1,500 OWNERS OF PLOTS  
IN MWENGENYE SETTLEMENT SCHEME, EMBAKASI AREA, NAIROBI.)

VERSUS

COMMISSIONER OF LANDS .....1<sup>ST</sup> RESPONDENT  
THE CHIEF LANDS REGISTRAR .....2<sup>ND</sup> RESPONDENT  
CITY COUNCIL OF NAIROBI.....3<sup>RD</sup> RESPONDENT  
MINISTER OF STATE FOR PROVINCIAL  
ADMINISTRATION & INTERNAL SECURITY.....4<sup>TH</sup> RESPONDENT  
THE HON. THE ATTORNEY GENERAL.....5<sup>TH</sup> RESPONDENT  
JAMES GAMAU WAINAINA.....6<sup>TH</sup> RESPONDENT  
SIMON MUTURI WANGUO.....7<sup>TH</sup> RESPONDENT  
RAPHAEL MUIGAI MWANGI.....8<sup>TH</sup> RESPONDENT  
PAUL KAHUTHI KONDIA.....9<sup>TH</sup> RESPONDENT

**RULING**

This Petition was struck out with costs to the Respondents by this court on 19<sup>th</sup> April 2013.

Thereafter, the Petitioner filed two consecutive applications namely:

1. Notice of Motion dated 22/4/13 seeking a stay of the ruling delivered by this court on 19<sup>th</sup> April 2013.
2. Notice of Motion dated 28/5/13 seeking an injunction restraining the Respondents from evicting the Petitioners from the Suit Land.

In respect of Notice of Motion dated 22/4/13, a temporary stay was granted until 14/5/13. A Preliminary Objection was raised against this application which was to be heard on 26/6/13. The court extended interim orders to 26/6/13.

In respect of the Notice of Motion dated 28/5/13, the court granted a restraining order for 14 days against the Defendants from evicting the Plaintiffs from the Suit Land. Up till 12/6/13. This was fixed for hearing on 26/6/13 and interim orders were extended to 26/6/13.

On 26/6/13 when the two applications and Preliminary Objection came up for hearing, Counsel for the Petitioners indicated that he does not intend to prosecute his applications as he had already filed an appeal at the Court of Appeal where a *Status quo* order had been granted.

This position was objected to by Counsels for the Respondents who maintained that the two applications should be dismissed forthwith on the ground that the Petition was struck off and there is no positive order in existence requiring to be stayed. Counsel also maintained that if the Petitioners had gone to the Court of Appeal, then they should pursue any conservatory orders from the Court of Appeal and not this court.

It is true that this court struck out the Petition on 19/4/13, on the ground, that the Petition was *res-judicata*. The Petitioner's next course of action was to proceed to the Court of Appeal which they did. This court is opposed to allowing the Petitioner's two pending applications to remain hanging on the necks of the Respondents as they await the determination of the Appeal in the Court of Appeal. Accordingly, I hereby direct that the Petitioner proceed with their pending applications or withdraw them altogether and pursue the appeal alone. The Petitioners are directed that failure to prosecute their applications will result in the same being dismissed for want of prosecution. Further, this court is not amenable to extending interim orders arising from the two cited applications.

It is so ordered.

**SIGNED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY 2013.**

**MARY M. GITUMBI**

**JUDGE**