



REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA AT NAIROBI  
ENVIRONMENTAL & LAND CASE 607 OF 2010

**NJUGUNA NGARUIYA**

**MARGARET KABURA NGAYUIYA.....PLAINTIFFS**

**VERSUS**

**VICTOR KATANA & 36 OTHERS.....RESPONDENTS**

**RULING**

By a ruling delivered on 21<sup>st</sup> November 2011, the defence by the 25<sup>th</sup> defendant, **MARGARET WAIRIMU KIMANI** (the applicant) was struck out. The plaintiffs' notice of motion dated 23<sup>rd</sup> May, 2012, was allowed in terms of prayers numbers 2, 3, 4, 5 and 6 thereafter.

On 5<sup>th</sup> December, 2011, the applicant filed a notice of motion which is expressed to be brought under **Sections 3A and 63 of the Civil Procedure Act**. The applicant is seeking for a stay of execution of the ruling of court dated 21<sup>st</sup> November, 2011. This application is premised on grounds that the applicant is dissatisfied with that ruling and she intends to appeal against the same. Further the applicant has applied for certified copies of proceedings and decree for purposes of appeal. Secondly and more importantly this matter is connected with another matter **H.C.SUCC.C. NO. 275 OF 2007** which declared that the applicant was not an heir to the estate of the late **Naomi Kabura Ngaruiya** (deceased).

The applicant has appealed in that Succession Cause and was granted a stay of execution. If the stay of execution is not granted in this matter, it will conflict with the order made in the Succession Cause and jeopardize the applicant's rights to the flat she has been occupying.

This application was opposed by the respondent. Mr Gacheru, learned counsel for the respondent, relied on a preliminary point of objection and a replying affidavit sworn by the plaintiff.

I have given considerable thought to the issues raised in this application. On 15<sup>th</sup> December, 2011, I granted the applicant's stay of execution in respect of the one flat that she has been occupying and directed that the applicant should not collect or impede the collection of rents from the other flats within the suit premises which is being undertaken by the plaintiff's as administrators of the estate of the late Naomi Kabura. In my considered view, that order still commends itself to remain in force until the applicant's appeal is determined or there are other orders.

I have taken in to consideration the fact that this matter emanates from a Succession Cause. This court took into account the judgment in the Succession Cause that declared the applicant was not an heir to the estate of the deceased. The plaintiffs, as the administrators of the deceased's estate, are entitled to take possession and to consolidate the estate of the deceased. Since that decision is under challenge, I am satisfied that the applicant should continue occupying the flat until the appeal is determined.

The Notice of Motion is, therefore, allowed in the following terms:

*“(a) Pending the determination of the appeal by the applicant in the Court of Appeal, the Applicant is allowed to occupy one flat (that she has been occupying) without interference by the Plaintiffs. Similarly the applicant shall not collect rent from any tenant on LR No. 209/2389/63 and 209/2389/72 residential flats within Mlango Kubwa area in Nairobi or interfere with the Plaintiff’s collection of the said rent.*

*(b) Cost of this application shall abide the appeal.”*

**Ruling read and signed this 30<sup>th</sup> day of March, 2012.**

**MARTHA KOOME**  
**JUDGE OF APPEAL**

**Note:**

*This application was heard and concluded on 15<sup>th</sup> December, 2011, when I was a Judge of the High Court. The matter was pending for ruling when I was appointed as a Judge of the Court of Appeal. I proceeded to write and append my signature thereto in my new capacity.*