



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO.195 OF 2010

**LUCY WANGUI MUNGE.....APPELLANT/
APPLICANT**

VERSUS

**PETER M. NGUGI.....1ST
RESPONDENT**

**GEOFFREY N. NYOIKE.....2ND
RESPONDENT**

**HOSEA M. MWIKA.....3RD
RESPONDENT**

RULING

The court below at Naivasha in CMCC No.15 of 2009 entered judgment in favour of the respondents in this application but dismissed the applicant's counterclaim. The implication of that was that the applicant was to vacate NAIVASHA/MWICHIRIGI BLOCK 6/1332 the subject matter of the dispute.

The applicant being aggrieved has preferred this appeal. In the meantime, she has brought the instant application for orders of temporary stay pending the determination of the appeal. She has deposed that she is apprehensive that the respondents may execute the decree by disposing of the suit property or demolishing the structures on the suit property.

In response, the respondents through the 1st respondent has deposed that the supporting affidavit has not been sworn by the applicant as the signature on it is significantly different from that used in the pleadings in the lower court; that the application for stay is misconceived as the applicant had already been evicted from the suit land.

I have considered the arguments. No order of stay of execution will be granted unless the court is satisfied that substantial loss may result to the applicant. No stay will be granted unless the application has been brought without undue delay and the applicant has demonstrated readiness to abide by any order as to security. It has been deposed and not rebutted that the execution is complete; that the applicant was in fact evicted from the suit property on 23rd January, 2009, several months before this application was

brought. As a matter of fact, the applicant herself has confirmed this position in her affidavit in support of an application for stay in the lower court in which she deposed that the respondents had moved onto the suit property and demolished her property on the basis of that court's decision of 22nd January, 2009. See paragraphs 4 and 9 of the supporting affidavit dated 30th January, 2009. With that explicit averment that execution is complete, this court cannot grant orders in

For these reasons, the application fails and is dismissed with costs.

Dated, Delivered and Signed at Nakuru this 28th day of February, 2011.

W. OUKO

JUDGE