



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Civil Suit 399 of 2000**

**PERIS WANJIKU NJUGUNA (*Suing as the legal Representative of***

***the late* MATHEW NJUGUNA NGANDA – *Deceased*.....APPLICANT**

**VERSUS**

**KENYA COMMERCIAL BANK LTD.....1<sup>ST</sup> RESPONDENT**

**ERNEST KAMAU MURIMI.....2<sup>ND</sup> RESPONDENT**

**JOHN MUTHEE NGUNJIRI t/a TANGO AUCTIONEERS.....3<sup>RD</sup> RESPONDENT**

**ZACHARY MURITU t/a MURITU & ASSOCIATES.....4<sup>TH</sup> RESPONDENT**

**RULING**

On the 17<sup>th</sup> May 2006 the applicant Peris Wanjiku Njuguna filed an application under Section 5 of the Judicature Act and Order XXXIX Rule 2 A(2) of the Civil Procedure Rules seeking the following orders of this court:

*“That this honourable court be pleased to make a finding to the effect that the respondents have been in breach of the court orders issued by this court, and upon making such a finding, the respondents should be committed to civil jail for a term not exceeding six months for they be sequestered (sic) or their properties be attached and sold by the (sic) public auction and the court be pleased to make (sic) such other punishment on the respondents as it may deem fit.”*

The applicant’s complaint arose from interim orders of stay of execution issued by this court on the 18<sup>th</sup> July, 2005. The applicant had sought to stay execution of the decree of this court. This application was served upon the respondents who however did not make an appearance in court during the hearing of the application.

It would be impossible to give reasons for the determination of this application without giving a brief background. The applicant’s husband, Mathew Njuguna Nganda sued the 1<sup>st</sup> defendant, the Kenya Commercial Bank Ltd and the registered trustees of the Catholic Diocese of Nakuru seeking several orders which included, *inter-alia*, and order of this court declaring the sale of L.R. No. 6221/1 Grant I.R. 7248 by the 1<sup>st</sup> defendant to the 2<sup>nd</sup> defendant to be unlawful and fraudulent. The plaintiff sought the said sale to be set aside. After hearing the case, this court dismissed the plaintiff’s suit and found that the said sale had been conducted lawfully after the 1<sup>st</sup> defendant had legally exercised his right of sale as a chargee.

After the dismissal of the suit, the applicant herein took over the conduct of the suit upon the death of her husband, Mathew Njuguna Nganda. The 2<sup>nd</sup> defendant after the conclusion of the case, took over possession of the suit land. It further sought to execute for its costs. It was during this process of execution that the applicant made the application to stay execution of its costs by the 2<sup>nd</sup> defendant. This court did issue ex-parte orders restraining the 2<sup>nd</sup> defendants or its agents from further executing against the applicant pending the hearing and determination of the application. The applicant did not however prosecute the said application for stay of execution. In fact, on the 29<sup>th</sup> of July, 2005 the parties to the said application agreed by consent to stand over generally the said application.

To-date, the applicant has not made any effort to prosecute the said application. The interim orders which were granted on the 18<sup>th</sup> July, 2005 lapsed when the parties agreed by consent to stand over the application generally.

It is therefore surprising that one year later, the applicant has woken up from her deep slumber and is seeking to commit the 2<sup>nd</sup> defendant and its agents for an execution process that was concluded a year earlier. It is the view of this court that the application herein is made with ulterior purposes which are not germane to the issues in dispute. The applicant is aware that when this court dismissed her husband's case on 10<sup>th</sup> November, 2004, any claim that her family had over the suit land ceased. The only avenue open for the applicant to challenge the said decision was to appeal to the Court of Appeal. It is apparent that the applicant, by filing the current application, was seeking to forestal the inevitable *i.e.* the eviction of her family from the suit land.

It is evident from the foregoing that the application herein is for dismissal. It lacks merit. It is consequently dismissed with costs to the respondents as it lacks merit.

**DATED at NAKURU this 18<sup>th</sup> October 2007**

**L. KIMARU**

**JUDGE**