



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC CASE NO. 36 OF 2019 (OS)**

**WILSON KAJUKI M'ERINGA.....PLAINTIFF/APPLICANT**

**VERSUS**

**MARTIN GITONGA MUGAA (sued as the legal representative of**

**MUGA MUGAMBI – DECEASED)....DEFENDANT/RESPONDENT**

**RULING**

1. Before me is an application filed on 18.2.2020 by the defendant pursuant to provisions of Section 1A, 1B, 3A and 63 (c) of the Civil Procedure Act and order 42 rule 6 (2) a & b of the Civil Procedure Rules. The applicant is seeking an order of stay of execution of the ruling delivered on 22.1.2020 pending the hearing and determination of the application and the intended appeal.

2. The application is premised on the grounds set out on the face of the application and in the affidavit of the defendant. The applicant contends that he is aggrieved by the aforementioned ruling, that the plaintiff has been visiting the land threatening to evict him and he therefore stands to suffer substantial loss if the orders are not granted. Applicant contends that he has an inherent right to pursue an appeal, which shall be rendered nugatory if the orders are not granted.

3. The plaintiff/respondent has opposed the application via his replying affidavit filed on 26.2.2020. He urges the court to note that the court has determined that plaintiff is the one on the land vide the court's ruling of 22.2.2020. He also avers that the orders sought shall cause delay, that applicant has not offered any security and that no appeal has been lodged.

4. The relief of stay of execution pending Appeal is governed by **Order 42 Rule 6 of the Civil Procedure Rules** which provides as follows:

***“6(1) No Appeal or second Appeal shall operate as a stay of execution or proceedings under a decree or order Appealed from except in so far as the Court Appealed from may order but, the Court Appealed from may for sufficient cause order stay of execution of such decree or order, and whether the Application for such stay shall have been granted or refused by the Court Appealed from, the Court to which such Appeal is preferred shall be at liberty, on Application being made, to consider such Application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court appealed from whose decision the Appeal is preferred may apply to the appellate Court to have such order set aside.***

***(2) No order for stay of execution shall be made under sub Rule (1) unless: -***

***a) The Court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without undue delay; and***

***b) Such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the Applicant.”***

5. In **Loice Khachendi Onyango v Alex Inyangu & another [2017] eKLR** the court held as follows;

***“The relief is discretionary but the discretion must be exercised judiciously and upon defined principles of law; not capriciously or whimsically. Therefore, stay of execution should only be granted where sufficient cause has been shown by the Applicant. In determining whether sufficient cause has been shown, the Court should be guided by the three pre-requisites provided under Order 42 Rule 6 of the Civil Procedure Rules. Firstly, the Application must be brought without undue delay; secondly, the court will satisfy itself that substantial loss may result to the Applicants unless stay of execution is granted; and thirdly such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the***

*Applicant....”*

6. This court is being urged to give a stay of the ruling delivered on 22.1.2020 where the court granted the orders of injunction and inhibition sought in the application dated 16.7.2019. The applicants contends that he stands to suffer substantial loss as he will be evicted.

7. The import of the orders sought in the application of 17.2.2020 is to set aside the injunctive and inhibition orders already given. In particular, the applicant is emphasizing that he is the one in occupation of the suit land. However, the court made a pronouncement on this matter. The applicant had given a notice of eviction to the plaintiff. Paragraph 10 and 11 of the ruling dated 22.1.2020 aptly captures the issue of status quo. This court cannot therefore delve into that issue all over again.

8. In the circumstances, I find that the application dated 17.2.2020 is not merited and the same is hereby dismissed with costs to plaintiff/respondent.

**DATED, SIGNED AND DELIVERED AT MERU THIS 3<sup>RD</sup> DAY OF FEBRUARY, 2021**

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**

**ORDER**

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 26.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**