



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. E034 OF 2021

PRISCILLA RUGARU.....APPELLANT

VERSUS

PURITY MUKIRI MWIRIGI RESPONDENT

(Being an appeal from the Ruling and order of the Hon D.W Nyambu (CM) delivered in Meru CM ELC NO 110 of 2018 on 2/2/2021)

RULING

1. Before me is a Notice Motion dated 15th February 2021 brought pursuant to provisions of Section 1A, 1B and 3A of the Civil Procedure Act, Order 51 Rule 1 of the Civil Procedure Rules, Section 3 and 9 of the Environment and Land Court Act No. 19 of 2011 and Article 159 (2) of the Constitution of Kenya seeking orders that the Court be pleased to issue an interim order of stay of proceedings and/or delivery of the judgment slated for 16/03/2021 by Hon D.W NYAMBU (CM) in MERU CM ELC NO 110 of 2018 pending the hearing and determination of this application and the appeal and that costs be provided for.

2. The Application is based on the grounds on the face of it and on the Supporting Affidavit dated 15/02/2021 and the further affidavit dated 25/02/2021 of Priscilla Rugaru, the Applicant. She avers that she was aggrieved by the ruling delivered on 2/2/2021 in Meru CM ELC No. 110 of 2018 by Hon Nyambu and wishes to appeal. She states that when the matter came up for hearing on 21/09/2020, the matter proceeded in her presence but in the absence of her advocate who was before the High Court and a judgment date was given. That she later filed an application seeking to set aside the ex parte proceedings which application was dismissed.

3. She contends that there has been no delay in filing this application and if the orders sought are not granted, the substratum of the appeal shall be rendered nugatory. She also stands to suffer irreparable loss and damage as the respondent is seeking for cancellation of her title to land parcel L.R NO. NTIMA/IGOKI/2170. The judgment before the subordinate court is due for delivery on 16.3.2021.

4. The application is opposed via the Replying Affidavit of Purity Mukiri Mwirigi dated 19/2/2021. She avers that it was the applicant who refused to cross-examine her during the hearing. She urges the court to note that the hearing date was taken by the appellant's advocate. That the appellant has not proven what substantial loss she will suffer as she can argue her entitlement to the parcel of land in the succession matter, hence the application should be dismissed.

5. I have carefully considered the issues raised herein. The question for determination is whether to grant the orders of stay of proceedings before the magistrate's court, particularly the delivery of the judgment. In Christopher Ndolo Mutuku & Another vs. CFC Stanbic Bank Ltd (2015) eKLR, the Court observed that;

“...what matters in an application for stay of proceedings pending appeal is the overall impression the Court makes out of the total sum of the circumstances of each, which should arouse almost a compulsion that the proceedings should be stayed in the interest of justice...”

6. In Re Global Tours & Travel Ltd HCWC No. 43 of 2000 quoted with approval in Mukunya Mugo 'A' & another v Elizabeth Mugure Mukunya [2019] eKLR, it was stated as follows;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matter, it should bear in mind such factors as the need for expeditious disposal of case, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity

and optimum utilization of judicial time and whether the application has been brought expeditiously.”

Also see Ezekiel Mule Musembi v H. Young & Company (E.A) Limited [2019] eKLR.

7. I have no doubts that the current application was filed without undue delay.

8. I have perused the ruling of the trial court dated 2.2.2021 which captures the circumstances under which the matter proceeded on 21.9.2020. In particular, the court had noted that the date was fixed by the defence (read appellant’s) advocate, and that the appellant was in court but she declined to proceed with her case.

9. The courts have an overriding objective under the Civil Procedure Act and Rules to facilitate the just, expeditious, proportionate and affordable resolution of the disputes governed by the Act. **Section 1A (3)** thereof provides that:

“A party to civil proceedings or an advocate for such a party is under a duty to assist the Court to further the overriding objective of the Act and, to that effect, to participate in the processes of the Court and to comply with the directions and orders of the Court”.

10. In Tana and Athi Rivers Development Authority vs. Jeremiah Kimigho Mwakio & 3 Others (2015) eKLR, it was held that;

“Courts have always emphasized that parties have a responsibility to show interest in and to follow up their cases even when they are represented by counsel.”

11. The appellant was in court when the matter was proceeding and she had a chance to mitigate her circumstances when her counsel failed to turn up. She failed to seize the moment and she cannot now turn around and claim that she was denied a chance to be heard.

12. This court is being called upon to determine the minute details of how the appellant’s counsel was informed that the matter was about to proceed but he did not turn up as he was in the High Court. I find that if this court was to allow the current application, it would in essence amount to micro managing the operations of the subordinate courts which can be construed as usurping the independence of those courts. In the final analysis, I find that the application is not merited. The same is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT MERU THIS 15TH DAY OF MARCH, 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 23.2.2021. 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 17th March, 2020 and published in the Kenya Gazette of 17th 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