



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 23 OF 2013 (OS)**

**LOISE NKATHA MUTHURI.....APPLICANT/PLAINTIFF**

**VERSUS**

**SILAS KIOGORA MBURUGU.....1<sup>ST</sup> RESPONDENT/DEFENDANT**

**JOSEPH MUTHOMI NGARUTHI.....2<sup>ND</sup> RESPONDENT/DEFENDANT**

**RULING**

1. Before me is a notice of motion dated 22.9.2020 brought pursuant to provisions of Order 50 rule 6 & Order 51 rule 1,2 &4 of the Civil Procedure Rules 2010, Section 1A, 1B, 3A & 63(e) of the Civil Procedure Act and Sections 13 (2) (e), 18 and 19 of the Environment and Land Court Act. The applicant seeks the following orders;

1) Spent

2) That the order for stay of execution for one year only, granted herein vide the ruling delivered on 02/10/2019 be extended to subsist and remain in force, until **Civil Appeal No. 46 of 2020** in the **Court of Appeal at Nyeri** is heard and determined.

3) That the cost of this application be provided for.

2. The application is based on the grounds on the face of it and on the supporting affidavit dated 22/09/2020 of **Loise Nkatha Muthuri**, the applicant. She avers that she had been granted a stay of execution for one year pending the hearing and determination of the appeal, of which, she deposited the sum of Kshs. 200,000 and also lodged her appeal in line with this court's ruling. She contends that her appeal is yet to be heard due to the shortage of judges in the Court of Appeal in Nyeri and the covid-19 pandemic. She states that she is an elderly lady aged 68 years and she risks being evicted with her family from their home. Due to these factors she urges the court to extend the stay of execution.

3. The application is opposed vide the replying affidavit of Silas Kiogora, the 1<sup>st</sup> respondent dated 15/10/2020. He avers that the application is a waste of court's valuable time, an abuse of the court process and is un-meritorious and ought to be struck out. The same is an afterthought and the applicant has not provided good/sufficient cause for not having her appeal heard on time.

4. The parties by consent on 26/10/2020 agreed to have the application canvassed by way of written submissions. The applicant's advocate also sought to file a supplementary affidavit to which the court ordered that the applicant was file and serve her further affidavit and submissions within 30 days by 26/11/2020, failure to which her application was to stand as dismissed. The respondents were to have corresponding 30 days to file and serve their submissions by 26/12/2020 failure to which their submissions were to be disregarded.

5. The appellant filed her further affidavit and submissions on 28/01/2021 despite dating the same 18/11/2020 which is two months after the date given by this court and two days before the matter was to come up for mention to confirm filing of submissions. The Court does not give orders in vain. The orders given on 26.10.2020 are self-executing. **Thus there is no application dated 22.9.2020 to determine as the same stood as dismissed on 27.11.2020. The applicant is condemned to pay costs of the said application. This file is marked as CLOSED.**

**DATED, SIGNED AND DELIVERED AT MERU THIS 14<sup>TH</sup> DAY OF APRIL, 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 2.2.2021. 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 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**