



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAIROBI

ELC CASE NO. 594 OF 2010

JANE NJERI KIBUTHIA.....1ST PLAINTIFF

GLADYS NJAMBI KABI.....2ND PLAINTIFF

ELIZABETH THABA KARURA.....3RD PLAINTIFF

AGNES WAIRIMU KARANJA.....4TH PLAINTIFF

REBECCA WANJIRU KARIUKI.....5TH PLAINTIFF

=VERSUS=

PENNINAH WAMBUI KINUTHIA.....1ST DEFENDANT

MILKA MWAURA.....2ND DEFENDANT

MIRIAM WANJA MWAURA.....3RD DEFENDANT

PAULINE WANGUI KARIUKI.....4TH DEFENDANT

RULING

1. Judgment in this matter was delivered on 22nd July 2017. Upon delivery of the said judgment this court on its own motion granted a stay of execution of forty-five (45) days.

2. The Defendants/Applicants have filed this notice of motion dated 14th October 2021 brought under Order 42 Rule 6(1), (2), Order 51 rule 1, of the Civil Procedure Rules 2010 and Section 1A, 1B and 3A of the Civil Procedure Act, and all other enabling provisions of the law.

3. It seeks order:-

1. Spent.

2. Spent.

3. That this honourable court be pleased to stay the execution of the judgment of this honourable court delivered on the 22nd July 2021 herein pending the hearing and final determination of the Applicants' appeal;

4. That in addition to the Order of stay of execution, this honourable court be pleased to issue an order of injunction restraining the Plaintiffs from transferring by way of sale, charging, leasing or otherwise disposing off any interest in the suit property Titles Number Githunguri/Kimathi/966 pending the hearing and final determination of the Appeal filed by the 1st and 4th Defendants.

5. That the costs of this application be provided for.

4. The grounds are on the face of the application and are set out in paragraphs (a) to (g).

5. The application is supported by the affidavit of Stephen Kinuthia Ndichu, the 1st Defendant/Applicant sworn on the 14th October 2021.
6. Mr. Mwangi for the 1st and 4th Defendants/Applicants told the court that he had served the application on the firm of M/S P. K. Njoroge and Company. I have gone through the affidavits of service sworn on the 26th November 2021 and 23rd February 2021. It appears the said firm was served. However, they have not filed any response to the application.
7. This notwithstanding, as stated earlier Judgment was delivered on 22nd July 2021. This application was filed on 14th October 2021. I find that the application has been filed after an inordinate delay.
8. In paragraph 5 of the supporting affidavit the 1st Defendant/Applicant deposes:-
- “That my advocates further requested for certified copies of proceedings and Decree vide their letters dated 28th July 2021 and to date they have only received the Decree but the typed proceedings have never been supplied to them despite their follow up in the Registry. Attached hereto and marked ‘SKN3’ are copies of the letters requesting for the decree and certified copies of the proceedings and their filing receipts”.***
9. I have gone through the court file there is a certificate of delay by the Deputy Registrar confirming that the proceedings were ready by 28th October 2021.
10. To date no memorandum of appeal has been filed in the Court of Appeal.
11. The Defendants/Applicants ought to pursue the orders of stay in the Court of Appeal.
12. For the foregoing reasons, I find no merit in this application and the same is dismissed with no orders as to costs.

It is so ordered.

DATED, SIGNED AND DELIVERED NAIROBI THIS 2ND DAY OF MARCH 2022.

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L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Plaintiffs

Mr. Mwangi for the 1st and 4th Defendants

Steve - Court Assistant