



**REPUBLIC OF KENYA**

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

**ELC APPEAL NO. 65 OF 2021**

**GRACE KARAMANA.....APPELLANT**

**VERSUS**

**FRIDAH MWARI .....1<sup>ST</sup> RESPONDENT**

**M'IKIARA M'MBOGORI.....2<sup>ND</sup> RESPONDENT**

*(Being an appeal from the Judgment of Hon. Susan Ndegwa (S.P.M.) delivered on 18<sup>th</sup> May, 2021, in Githongo P.M.C'S ELC No. 18 of 2018)*

**RULING**

1. By an application dated **30/6/2021** the appellant seeks stay of execution of the judgment delivered in **Githongo PMC ELC No. 18 of 2018** on **17/5/2021** pending hearing and determination of this appeal.
2. The application is supported by an affidavit sworn by the appellant on **30/6/2021** on the grounds that she lives on the suit land which is registered under her deceased husband **Edward Kiriimi**; and that the application has been brought without delay.
3. The appellant submits she was vested with the suit land vide **Meru High Court Succession Cause No. 298 of 2003** which decree the lower court in her view overlooked. She believes her appeal has high chances of success.
4. The respondents have opposed the application through preliminary objections dated **21/6/2021** and **24/9/2021** on the basis that the appeal offends **Order 9 Rule 9** of the **Civil Procedure Rules**.
5. In **Tobias M. Wafubwa –vs- Ben Butali [2017] eKLR** the Court of Appeal held once a judgment is entered, an appeal, before an appellate court is not a continuation of the proceedings in the lower court. It is the court's view a commencement of a new proceeding in a court operating under different rules in which a party has a right to choose new legal representation.
6. In my view and being bound by the above decision I find both the appeal and this application as competently before the court.
7. Turning to the request for stay of execution, a party seeking stay under **Order 42 Rule 6 (1)** of the **Civil Procedure Rules** has to demonstrate substantial loss; that there has been no inordinate delay in lodging the application and that he is willing to offer security for due performance of the decree.
8. In **Godfrey Wainaina Kinaynji & Another –vs- Joseph Kwikya Musaa [2020]eKLR** it was held the applicant must not only make assertions but also offer empirical documentary evidence to support such contention. The court carries out a balancing exercise to ensure justice and fairness thrive within the corridors of power.
9. In the instant case other than the appellant saying she has lived on the suit land for decades and her family will suffer irreparable harm, will be rendered destitute or homeless, she has offered no documents to substantiate those claims.
10. Similarly, the appellant has not demonstrated if there is any threatened or impeding execution by way of notices to that effect. In the premises I find the application lacking merit. The same is dismissed with costs.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 3<sup>RD</sup> DAY OF NOVEMBER, 2021**

**IN PRESENCE OF:**

**MRS. OTIENO FOR 1ST RESPONDENT**

**ONYARI HOLDING BRIEF FOR MWONGELA FOR APPELLANT**

**COURT CLERK: KANANU**

**HON. C.K. NZILI**

**ELC JUDGE**