



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC NO. 100 OF 2002

HENRY NDUMBA (Suing as the

legal representative of the Estate of

MWIRICHIA M'ANGARE.....PLAINTIF/APPLICANT

VERSUS

M'IBIRI M'MBOGORI.....1ST DEFENDANT/RESPONDENT

JUSTUS MURUGA M'IKIUGU.....2ND DEFENDANT/RESPONDENT

STANDARD CHARTERED BANK.....3RD DEFENDANT/RESPONDENT

RULING

1. Vide a notice of motion dated 30.1.2020, the applicant is seeking an order of stay of execution of the judgment/decree of this Court delivered on 7/11/2019 pending inter parties hearing of the application and the intended appeal at the Court of Appeal.
2. The application is based on the grounds on its face and on the supporting affidavit of the plaintiff who avers that he filed his notice of appeal and applied for proceedings and copies of the judgment. The suit property is a permanent building in town which the respondents have threatened to dispose of which in turn would cause immense loss and damage to himself and other family members which cannot be compensated by an award of damages. He also contends that the application was filed in good time and that the intended appeal has high chances of success.
3. The application is opposed by the 1st defendant/respondent vide a replying affidavit dated 15/03/2021, averring that the applicant has not demonstrated that he will suffer substantial loss unless the orders sought are issued, that he is not selling the land as the same is charged to the 3rd defendant. Further the application should fail as there is no subsisting appeal 16 months after judgment was delivered, that this application has not been prosecuted for over 14 months since being filed proving that the applicant is indolent and that the applicant's suit was dismissed thus there are no positive orders capable of being stayed.
4. I have considered the application and affidavits both in support and opposition of the application. To grant or not to grant a stay of execution of the judgment delivered by this court on 7.11.2019 is the issue for determination.
5. This court dismissed the plaintiff's suit, thus the judgment sought to be stayed is a negative order. It is now trite that such orders are not amenable to stay. This was reiterated in **George Ole Sangui v. Kedong Ranch Limited (2015) eKLR** where the Court citing the famous case of **Western College of Arts And Applied Sciences v. Oranga & Others [1976] KLR 63**, pronounced itself as follows:-

“In the instant case, the High Court dismissed the suit in which the applicants were seeking a declaration and an order to be registered as the proprietors of the suit land on the basis of the doctrine of adverse possession. The dismissal order cannot be enforced and is not capable of execution. It is not a positive order requiring any party to do or to refrain from doing anything. It does not confer any relief. It simply determined the suit by making a finding that the claimant was not entitled to the reliefs or orders sought and dismissed the suit against the respondent. That was not a positive order that required any party to do or refrain from doing anything. It was not capable of execution or enforcement. The act of dismissal of the suit could not be stayed. It is our finding that to the extent to which the application seeks stay of the order of the dismissal of the suit it cannot be granted.”

6. It follows that the application is misconceived and cannot be granted. In the premises, I find no merit in the Notice of Motion dated 30th January, 2020 and the same is dismissed with costs to the 1st Defendant/Respondent.

DATED, SIGNED AND DELIVERED VIA EMAIL AT MERU THIS 22ND DAY OF SEPTEMBER, 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 notice issued on 3.9.2021. 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