



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC JUDICIAL REVIEW NO. 4 OF 2008**

**IN THE MATTER OF JUDICIAL REVIEW FOR ORDERS OF CERTIORARI**

**AND**

**IN THE MATTER OF L.R. NO. 2025 NAATHU/NAATHU ADJUDICATION SECTION**

**GEOFFREY MUTHUIBA .....APPLICANT**

**BETWEEN**

**DEPUTY COUNTY COMMISSIONER .....1<sup>ST</sup> RESPONDENT**

**THE ATTORNEY GENERAL .....2<sup>ND</sup> RESPONDENT**

**JOSEPH MATI BAIKIOME .....3<sup>RD</sup> RESPONDENT**

**RULING**

1. The ex parte applicant through an application dated **24.5.2021** seeks stay of execution over costs and prays for liquidation of the same in monthly instalments of **Kshs. 10,000/=** until full payment.
2. The application is based on the grounds on the face of the application and a supporting affidavit sworn on 24.5.2021.  
  
The grounds of the application are that though a notice of appeal has been filed the bill was taxed but no demand was ever issued though a warrant of arrest has been issued; the applicant is unable to pay in lump sum due to poverty, family and school fee commitments.
3. The 3<sup>rd</sup> respondent opposes the notice of motion through a replying affidavit sworn on 7.6.2021 on the grounds that: the application is brought by a law firm improperly on record for the applicant; the taxation was done in the presence of the applicant's counsel and hence the applicant is deemed to have been aware of the same; the application is brought after a delay of 3 months; the applicant has not handed over vacant possession leading to another suit and he is capable of paying at once since he is still benefiting from the suit land; harvesting miraa plants though illegally and it would take long to liquidate the amount.
4. The judgment was delivered on 7<sup>th</sup> February 2020 after which taxation of costs was made on 10.12.2020. A notice to show cause was taken out for hearing on 10.6.2021. Upon service the applicant filed the current application, whereby directions were given that the application be heard before the notice to show cause is heard and determined.
5. **Order 42 rule 6** grants court powers to order stay of execution if the court is satisfied that substantial loss may result to the applicant unless the order is made, it is made without unreasonable delay and lastly such security is given for due performance of such decree. **Order 21 rule 12 (1)** allows a party to a decree for payment of money to pay in installments for any sufficient reason and with consent of the decree holder.
6. In ***Kenya Shell Ltd –vs- Benjamin Karuga Kabiru & Another [1986] eKLR*** the court held it is not sufficient to state the decretal amount is a lot of money, an applicant must give sufficient material to enable the court exercise discretion in his favour, while in ***Lavington Security Ltd., Hildegard Ndalut -vs- Lelkina Dairies Ltd & Another 2005 eKLR***. The court held a judgment debtor must show seriousness in paying the amount, he is bonafide by arranging fair payment proposals to liquidate the amount.
7. This court is aware the decretal amount was out of costs upon dismissal of the Judicial Review proceedings. The applicant has not denied

he is still occupying the suit land. He has not given particulars of the nature of occupation, numbers of the school going children, details of his income and expenses so that the court can assess his bonafides. In absence of the said details the court finds the application has been brought after 3 months with no explanation as to why it was not brought immediately the costs were assessed.

8. Similarly it has not been shown that if the interested party is paid and the appeal succeeds, he may not be able to refund the amount.

9. In the premises, the application is dismissed with costs.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 24<sup>TH</sup> DAY OF NOVEMBER, 2021**

**In presence of:**

Miss Masamba for Mutembei for appellant

Haron Gitonga for respondent

Court Assistant - Kananu

**HON. C.K. NZILI**

**ELC JUDGE**