



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 17 OF 2021

EUSTACE KARIGICHAAPPELLANT

VERSUS

JOHN GITONGA GEOFFREY.....RESPONDENT

RULING

1. The application before the court is the one dated **29.7.2021** seeking stay of execution of the judgment made on **22.1.2020**.
2. The application is supported by an affidavit of **Kiruai Mukono** sworn on 24.1.2021.
3. Further the applicant seeks to set aside judgment delivered on 21.7.2021.
4. Though served, the respondent has not opposed the application.
5. The applicant has to prove substantial loss if the stay is not granted; that the application was filed without inordinate delay; that he is ready to offer security for the due performance of the decree should the appeal be unsuccessful and lastly; that it is in the interest of justice to allow for stay pending the hearing of the appeal.
6. The applicant states he was unable to file submissions on time hence the appeal was dismissed on 21.7.2021 without considering his submissions.
7. On the issue of stay, the court merely gave a negative order. It cannot be executed and hence guided by ***Milcah Jeruto –vs- Fina Bank Ltd. [2013] eKLR*** I find no merits in this prayer.
8. Coming to the issue of setting aside, the applicant's counsel has sworn an affidavit blaming court e-filing system for his predicament. The record shows the court had previously indulged him since 3.2.2021. If he had difficulties and was diligent enough to adhere to the court orders, there was nothing stopping him from making an appropriate request so soon thereafter in the month of April, May and or June. He could have an application for the arrest of the delivery of judgment in July 2021. Instead the applicant waited until the fateful day.
9. Further if indeed the submissions were duly filed the following day as alleged counsel would have sought for the extension of time soon thereafter and not await for a whole three months.
10. In the circumstances, I find the application lacking merits. The same is dismissed with no order as to costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 15TH DAY OF DECEMBER, 2021

IN PRESENCE OF:

MISS MURITHI FOR APPLICANT

GICHUNGE FOR RESPONDENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE