



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KIAMBU

MISC. CIVIL APPLICATION NO. 214 OF 2020

BETWEEN

FRANCIS KINYANJUI MWANGI.....APPLICANT

VERSUS

SARAFINA WANJIRU IKAHU.....DEFENDANT

RULING

1. Judgment was entered on 30th April, 2020 before the Thika chief Magistrate’s Court in Civil Case No. 966 of 2013 against **FRANCIS KINYANJUI MWANGI (Francis)**. By that judgment, **SARAFINA WANJIRU IKAHU (Sarafina)** succeeded in her claim for the property **RUIRU/KIU BLOCK 12/329**. In the execution of that judgment, Sarafina sought and obtained orders for the eviction of Francis from that property.

2. Francis has not filed an appeal against that judgment. Francis on a separate file, has sought leave to admit his appeal out of the time period prescribed under **Section 799** of the **Civil Procedure Act Cap. 21**. That 799 of Cap. 21 provides:-

“79G. Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order.

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had good and sufficient cause for not filing the appeal in time.”

3. By the Notice of Motion application dated 27th August, 2021, in this matter, Francis seeks stay of his eviction from the afore stated property by the lower court. Stay of execution under **Order 42 Rule 6 (1) and (2)** of the **Civil Procedure Rules** is granted pending the hearing and determination of an appeal. Francis has not filed an appeal against the Thika Chief Magistrate’s case. Stay of execution under **Order 42 Rule 6 (1) and (2)** cannot, in those circumstances be granted to Francis. It is for the above reason that I decline to entertain the application for stay of execution as sought by Francis. I am aware that there is an application for the appeal to be admitted out of time filed by Francis, in a separate file, which comes for consideration before this court today. In the event the leave sought is granted, stay of execution will be granted for the interest of justice would best be served by staying eviction of Francis who has occupied the property since 1991.

4. The order I make today is that stay of execution previously granted to Francis will not be extended unless there is an appeal on record. Therefore, the final determination of the Notice of Motion dated 27th August, 2021 is hereby held in abeyance.

RULING DATED AND DELIVERED AT KIAMBU THIS 22ND DAY OF SEPTEMBER, 2021

MARY KASANGO

JUDGE

Coram:

Court Assistant : Ndege

Francis Kinyanjui Mwangi (Applicant in person) :- Present

For Sarafina Wanjiru/Kahu :- Miss Mwangi

COURT

Ruling delivered virtually.

MARY KASANGO

JUDGE