



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAIROBI**

**ELC CASE NO. 281 OF 2009**

**ZAKARIA MUIGAI GAKIBE.....PLAINTIFF**

**VERSUS**

**JOHN MWENJA NGUMBA sued as the Administrator of**

**The Estate of Andrew Kimani Ngumba.....1<sup>ST</sup> DEFENDANT**

**KENYA COMMERCIAL BANK LIMITED.....2<sup>ND</sup> DEFENANT**

**ROYAL BUILDERS AND INVESTMENTS LIMITED.....3<sup>RD</sup> DEFENANT**

**THE ATTORNEY GENERAL on behalf of**

**THE COMMISSIONER FOR LANDS.....4<sup>TH</sup> DEFENDANT**

**EQUITY BANK LIMITED.....5<sup>TH</sup> DEFENANT**

**RULING**

1. This is the Notice of Motion dated 8<sup>th</sup> September 2021 brought under sections 3A and 95 of Civil Procedure Act Cap 21 Laws of Kenya, order 50 rule 6 Civil Procedure Rules.
2. It seeks orders:-
  1. *Spent.*
  2. *That this honourable court be pleased to extend the order of stay of execution granted on 29<sup>th</sup> July 2021 by a further sixty (60) days.*
  3. *The costs hereof be in the cause.*
3. The grounds are on the face of the application and are set out in paragraphs 1 to 7.
4. The application is supported by the affidavit of Zacharia Muigai Gakibe, the Plaintiff/Applicant, sworn on the 8<sup>th</sup> September 2021.
5. The application is opposed. There is a replying affidavit sworn by the 1<sup>st</sup> Defendant/Respondent, on the 8<sup>th</sup> October 2021. The 3<sup>rd</sup> Defendant/Respondent also filed a replying affidavit. The 5<sup>th</sup> Defendant/Respondent did not file any response but Ms Kiuluki stated that the 5<sup>th</sup> Defendant/Respondent wished to associate itself with the 1<sup>st</sup> and 3<sup>rd</sup> Defendant's/Respondent's responses and submissions.
6. The Application was canvassed by oral submissions on the 11<sup>th</sup> November 2021.
7. I have considered the notice of motion and the affidavit in support. I have considered the responses and the rival submissions. The issue for determination is whether this application is merited.

8. The notice of motion is brought under section 3A and 95 of the Civil Procedure Act and order 50 rule 6 of the Civil Procedure Rules. **Section 95** of the Civil Procedure Act provides that:-

***“Where any period is fixed or granted by the court for the doing of any act prescribed or allowed by this Act, the court may, in its discretion, from time to time, enlarge such period, even though the period originally fixed or granted may have expired.”***

9. I agree with counsel for the 3<sup>rd</sup> Defendant’s/Respondent’s submissions that the application is fatally defective having been brought under the wrong provisions of the law. From the submissions of the Plaintiff’s counsel it is clear that the Plaintiff seeks stay of execution pending appeal and/or the application in the Court of Appeal.

10. This court delivered judgment on the 29<sup>th</sup> July 2021. This court in its own motion granted the Plaintiff forty-five (45) days stay of execution. I find that this was enough time to enable him to pursue other avenues in the Court of Appeal. This court is *functus officio* as there is nothing left for this court to do.

11. There is no application for stay of execution pending appeal before this court for consideration. The orders of stay of execution granted by this court on 29<sup>th</sup> July 2021 lapsed after 45 days. Court orders are not issued in vain.

12. I find no merit in this application and the same is dismissed with costs to the 1<sup>st</sup>, 3<sup>rd</sup> and 5<sup>th</sup> Defendants/Respondents.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 2ND DAY OF DECEMBER 2021.**

.....

**L. KOMINGOI**

**JUDGE**

**IN THE PRESENCE OF:-**

**MR. KYALO MBOBU FOR THE PLAINTIFF**

MS KEMBOY FOR MR. NYAIRO FOR THE 1ST DEFENDANT ALSO HOLDING BRIEF FOR MR. CHEGE FOR THE 3RD DEFENDANT.

MR. KAULA FOR THE 2ND DEFENDANT

NO APPEARANCE FOR THE 4TH DEFENDANT

MS CHERUIYOT FOR THE 5TH DEFENDANT

**STEVE - COURT ASSISTANT**