REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC MISC. APPLICATION NO. E21 OF 2021

ESTHER MICHUKI KAUNGURU ……..….. APPLICANT

VERSUS

NANCY NJUENE MUTHUIA ……...……. .1ST RESPONDENT

MARTIN LUBERE …… .2ND RESPONDENT

RULING

1. By an application dated 2.8.2021 brought under **Order 21 Rule 25 of the civil Procedure Rules** the applicant seeks stay of execution in **Isiolo ELC No. 17 of 2016** delivered on 28.7.2021 pending hearing of this application due to a threatened demolition and eviction from suit land.

2. The application is supported by an affidavit of **Esther Kaunguru Michuki** sworn on 2.8.2021, stating her application dated **28.6.2021** to stay the lower court suit was due for hearing on **20.9.2021**. Surprisingly, the judgment was delivered on **28.7.2021** ostensibly to defeat her application. It is the applicant's contention she was condemned unheard and unless there is stay this application would be rendered nugatory.

The 1st respondent has opposed the application through a replying affidavit sworn on **14.9.2021**. It is averred the applicant was enjoined in the lower court suit on **23.6.2020,** had notice of hearing, sought adjournment twice, failed to attend court on **8.6.2021** hence application is an abuse of the court process.

3. The 1st respondent through written submissions dated **29.9.2021** urges the court to note though joined on 23.6.2021 the applicant did not file any defence or enter appearance. He urges the court to be guided by ***Juliana Mulikwa Muindi –vs- Board of Management Yangua Mixed Secondary School & Another [2018] eKLR, Mbeu Kithaka –vs- Philip Muchiri Mugo [2019] eKLR, Muchiri T/A Machira & Co. Advocates –vs- East African Standard (No. 2) [2002] KLR, 63.***

4. **Order 21 rule 25** of the **Civil Procedure Rules** provides as follows:-

> ***"Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may on such terms as to security or otherwise as it thinks fit, stay execution of the decree until the pending suit has been decided***."

5. The applicant has approached this court through a miscellaneous application. There is no pending appeal in which the miscellaneous application is based on. There is no indication if the applicant upon delivery of the judgment has preferred an appeal. There is no record to show there is an impending execution against the applicant in whichever way so as to establish there is imminent danger of execution. There in law, no **Order 21 Rule 25**. What is there is **Order 22 rule 25** which talks of a pending suit. No suit is pending before this court.

6. The applicant has not stated whether he has been served with a notice of entry of judgment against her. This court is alive to the fact that the applicant joined the suit at the tail end leading to re-opening of the proceedings so as to accommodate her.

7. The 1st respondent has opposed the motion on the ground that after being enjoined the applicant filed no pleadings so as to raise her stake. This court cannot establish if any substantial loss will be occasioned if there is no stay of execution or not and if so for what purpose. Ordinarily the court would grant stay pending determination of a pending or intended appeal with high chances or likelihood of a success.

8. In the instant case judgment was delivered on 28.7.2021. A party intending to file an appeal under the law has 30 days to file it. The time for lodging an appeal has expired and the applicant has not disclosed if she has preferred any appeal and on what grounds. This court cannot

therefore act on speculations or presuppositions. Nothing concrete has been placed before the court to gauge the basis of the applicants claim or appeal.

9. In the premises and going by the authorities supplied I am inclined to find the application lacking merits. The same is dismissed with costs to the respondents.

File closed.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 10TH DAY OF NOVEMBER, 2021

In presence of:

Miss Rimita for respondent

Mukanguru for respondent for applicant

Court Clerk: Kananu

HON. C.K. NZILI

ELC JUDGE