



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MILIMANI LAW COURTS**

**ELC CIVIL MISC APP.NO 76 OF 2019**

**BEATRICE MALESI.....APPLICANT**

**VERSUS**

**PETER NDIRITU & ANOTHER.....RESPONDENT**

**RULING.**

1. This is a ruling in respect of a notice of motion dated 26<sup>th</sup> July 2019 in which the Applicant seeks stay of execution pending appeal. The Applicant contends that she applied for stay of execution to the trial court which application was dismissed. She contends that the 1<sup>st</sup> Respondent has sent surveyors to go and sub-divide the suit property. She therefore argues that if the subdivision is carried out, it will have taken away the substratum of the appeal.

2. The Applicant's application has been opposed by the 1<sup>st</sup> Respondent through a replying affidavit sworn on 16<sup>th</sup> September 2019. The 1<sup>st</sup> Respondent contends that the Applicant's allegations that he has embarked on subdivision are baseless and that he merely took the surveyor to the ground to point out the beacons. He further argues that subdivision was done in 1993 and separate allotments made. The 1<sup>st</sup> Respondent further argues that the Applicant was allocated Plot D-11 and his plot is CS -18.

3. The 1<sup>st</sup> Respondent further argues that the Applicant has not demonstrated what substantial loss she will suffer if stay is not granted and that he has constructed permanent structures which he should not have done if the Applicant had filed an appeal in time.

4. I have considered the Applicant's application as well as the opposition thereto by the 1<sup>st</sup> Respondent. I have also considered the submissions filed by the parties. In an application for stay pending appeal, the Applicant is supposed to meet three conditions. The first condition is that the application must be brought without unreasonable delay. The second condition is that there must be demonstration of substantial loss. The third one is security.

5. In the instant case, the Applicants came to learn of the delivery of Judgement on April 2019. This was because the Judgement was delivered without notice having been given. The Applicant immediately filed an application for extension of time to file the appeal out of time followed by this one for stay of execution. In the circumstances therefore I do not find that there was unreasonable delay in bringing this application.

6. The Applicant contends that it is her plot which was again sold to another person after it had been allocated to her. If part of her plot was to be taken, this will be prejudicial to her. This will amount to substantial loss. I therefore find that it is necessary to grant stay pending appeal. I therefore allow the Applicant's application on condition that the Applicant deposits in court security for costs in the sum of Kshs.200,000/= within 60 days failing which stay shall automatically lapse.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 30<sup>th</sup> day of January 2020.**

**E.O.OBAGA**

**JUDGE**

In the presence of:

Mr. Mwangi for 1<sup>st</sup> defendant

Mr. Owange for 2<sup>nd</sup> defendant

Court Assistant: Waweru

**E.O. OBAGA**

**JUDGE**