



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT MERU**

**ENVIRONMENT & LAND CASE NO. 54 OF 2016**

**KATHIRI KIRIGIA.....1ST APPLICANT**

**JOANINA KIRIGIA .....2ND APPLICANT**

**VERSUS**

**SIVILINO RUKUNGA M'TTIRI.....RESPONDENT**

**RULING**

1. On 7th September, 2016, Mrs. Mwangi sought Prayer C in the Applicant's application dated 30th March, 2016. The application seeks orders that:-

- (a) This application be certified urgent and the same be heard ex-parte in the 1st instance, therefore service of the same be dispensed with at the 1st instance.***
- (b) The Firm of M/S Mwangi E.G. & Co Advocate be appointed to represent the applicants herein instead of M/S Meenye & Kirima Advocates, and proceed with this matter to its logical conclusion.***
- (c) An order for stay of execution do issue staying execution of the elders award dated 29/01/2007 and confirmed as judgment of the Court on 30/07/2013.***
- (d) The Court do set aside and/or quash all the orders made subsequent to 6/9/2002 when the defendant herein died.***
- (e) The Court do make an order that by 6/9/2003 this suit had automatically lapsed therefore any orders made thereafter are null and void and of the legal consequence(sic).***
- (f) The Court do make such further better orders as may meet the ends of justice in this suit.***
- (g) Costs of this application be provided for.***

2. The application is supported by the Affidavit of KATHIRI KIRIGIA and has the following grounds:-

- (1) This suit abated on 5/9/2003 as no legal representative had by then been appointed, the defendant having died on 6/9/2002.***
- (2) All orders issued thereafter are illegal as they are contrary to the law.***
- (3) Abatement is automatic on the lapse of 1 year.***

**(4) This matter is concluded.**

3. On 21/5/2016, I granted an order that CMCC No. 23 of 1995 be transferred to this Court for hearing and determination. However, this Order was made per incurium as I had not been informed that the apposite suit had been heard and determined in the Lower Court. Having known the facts now, I discharge the order issued on 24th May, 2016 for transfer of CMCC NO. 23 of 1995 to this Court. A Judgment having been delivered, the proper thing to do was for the aggrieved party to lodge an appeal.

4. On 7/9/2016, Miss Mwangi for the applicant, asked the Court to stay execution of the elders award dated 29/01/2007 which was confirmed as a Judgment of the CM's Court on 30/07/2013.

5. I have considered this matter carefully, I refuse to grant stay of execution even on condition that appropriate security be deposited.

6. It is ordered that this file be returned to the Chief Magistrate's Court.

7. Costs shall be in the cause.

8. It is so ordered.

**DELIVERED IN OPEN COURT AT MERU THIS 7<sup>TH</sup> DAY OF SEPTEMBER, 2016 IN THE PRESENCE OF:-**

CC: Daniel/Lilian

Manases Kariuki h/b Miss E.G. Mwangi for the Applicant.

**P. M. NJOROGE**

**JUDGE**