



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**MERU ELC CONSTITUTIONAL PETITION CASE NO. 02 OF 2014**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF CONSTITUTION RIGHT**

**FREEDOMS AND GUARANTEES UNDER ARTICLES 22, 40B & 47 OF THE CONSTITUTION OF KENYA**

**ISAIAH MBAABU (suing on behalf of the Athimba claim).....1<sup>ST</sup> APPLICANT**

**PASQUARE MUKETHA (suing on behalf of Akachiu clan).....2<sup>ND</sup> APPLICANT**

**IBRAHIM KARANI (suing on behalf of Nkula Clan).....3<sup>RD</sup> APPLICANT**

**VERSUS**

**THE LAND ADJUDICATION & SETTLEMENT OFFICER**

**IGEMBE SOUTH DISTRICT.....1<sup>ST</sup> RESPONDENT**

**HON. ATTORNEY GENERAL.....2<sup>ND</sup> RESPONDENT**

**MATE KABARIA BAIBIRI.....3<sup>RD</sup> RESPONDENT**

**KOBIA BAIMURI.....4<sup>TH</sup> RESPONDENT**

**PAUL SOLOMON MIRITI.....5<sup>TH</sup> RESPONDENT**

**RULING**

1. This application states that it has been brought to court under sections 1A, 1B, 3A, 65 & 95 of the Civil Procedure Act and under Order 42 of the Civil Procedure Rules. The application seeks the following orders:-

1. That this application be certified as urgent, service be dispensed with and it be heard ex-parte in the first instance.
2. That this honourable court be pleased to issue an order of stay of execution of the judgment of the honourable Lady Justice L. Mbugua delivered on 14<sup>th</sup> July, 2020 pending the determination of this application inter partes.
3. That this honourable court be pleased to issue an order of stay of execution of the judgment delivered on 14<sup>th</sup> July, 2020 pending the determination of the applicants' intended appeal.
4. That the honourable court be pleased to grant the applicants leave to appeal out of time against the judgment of the honourable Lady Justice L. Mbugua delivered on 14<sup>th</sup> July, 2020 in Meru ELC Constitutional Petition No. 2 of 2014.
5. That there be such other or further orders as may be necessary and appropriate to meet the ends of justice.
6. That the costs of and incidental to this application be provided for.

2. The application is supported by the affidavit of Isaiah Mbaabu, the applicant, and has the following grounds:-

1. That on 14<sup>th</sup> July, 2020 the Superior Court delivered its judgment and dismissed the applicants' petition in its entirety.
2. That the time frame for filing Notice of Appeal has lapsed and there is need for the honourable court to enlarge time to allow the applicants to file an appeal out of time and also for the court to order for stay of execution pending hearing and determination of this application as well as hearing of the appeal.
3. That the applicants being quite elderly and having underlying health conditions have been apprehensive about travelling amid COVID 19 pandemic and thus were not able to travel to the advocates office to give proper instructions to proceed with the appeal.
4. That due to the said reason, it was not possible to file and serve the Notice of Appeal within the stipulated time.
5. That the delay is not inordinate and the same was not intentional but due to the prevailing COVID 19 Pandemic.
6. That the applicants' appeal which has very high chances of succeeding will be rendered nugatory unless the honourable court grants the applicants orders for stay of execution pending hearing and determination of this application as well as the intended appeal.
7. That the applicants stand to suffer substantial and irreparable harm if orders for stay of execution and enlargement of time are not issued urgently, as they may never recover the suit property.
8. That the respondents have commenced execution of the orders granted therein in earnest to evict the applicants from the suit property thereby depriving the applicants their ancestral land hence greatly prejudicing them.
9. That unless this court intervenes urgently, the respondents will execute the said orders before the instant intended appeal is heard and determined and thereby render the same an academic exercise, useless or nugatory.
10. That this honourable court has discretionary (sic) powers to issue the orders sought an (sic) order in exercise of its jurisdiction.
11. That the respondents shall suffer no prejudice if the application is allowed.
12. That it is in the best interests of justice for this honourable court to grant the orders sought.

3. Miss Materi, for the applicant, told the court that she relied on the grounds on the face of the application and on its supporting affidavit.

4. I note that the stay of execution sought concerns a judgment delivered by the honourable Justice L. Mbugua, Judge, delivered on 14<sup>th</sup> July, 2020. Also the leave to appeal out of time concerns the said judgment. Although this matter has been brought to court during recess, I note that the Hon. Lady Justice Lucy Mbugua, Judge, shall be on duty between 17<sup>th</sup> and 28<sup>th</sup> of August, 2020. I find it desirable that the application be heard by the Hon. Lady Justice Mbugua.

5. The following orders are issued:-

- a. This application is certified urgent.
- b. This application be placed before the Hon. Justice Lucy Mbugua, ELC Judge at Meru on 25<sup>th</sup> August, 2020 for hearing and/or directions.

**Delivered in open court at Chuka this 12<sup>th</sup> day of August, 2020 in the presence of:**

CA: Ndegwa

Miss Materi for the applicant

**P. M. NJOROGE,**

**JUDGE.**