



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KISUMU**

**ELC APPEAL CASE NO. 41 (E6/20) OF 2020**

**ZIPPORAH MUHOLO WAWIRA.....APPELLANT**

**VERSUS**

**WILLIAM OCHIENG DANIEL OMORO.....RESPONDENT**

**RULING**

The appellant Zipporah Muholo Wawira has come to this court by way of Appeal against the ruling of the Honourable J. O. Ongondo delivered on 8/10/2020 in Siaya Misc Civil Application No. 39 of 2003. The grounds of the Appeal are that the Learned Magistrate erred in law and fact by ordering the immediate eviction of the Appellant from L. R. No. Ugenya/Yiro/1462 upon a Judgment which was issued on the 14<sup>th</sup> day of March 2006 and had consequently lapsed and of no legal efficacy in terms of Section 4 (4) of the Limitations of Actions Act. Moreover, that the Learned Magistrate erred in law and fact by declining to stay the orders of eviction in the lower court suit and instead gave the parties herein an opportunity to litigate over the ownership of L.R. No. Ugenya/Yiro/1462 vide Kisumu ELC Cause No. 49 of 2020 (O.S) which is a suit based on Adverse Possession and filed by the Appellant.

Accompanying the appeal is a notice of motion dated 12/10/2020 wherein the appellant seeks orders that pending determination of Appeal, the court to stay execution of the Judgment vide Siaya Misc Civil Application no. 39 of 2003. The application is based on grounds that the Appellant is the widow of the late Elkano Oduor Wamira to whom she was married in the year 1970 and they established their matrimonial home on plot 1462 measuring approximately 1.3 Ha which is registered in the name of the Respondent.

The Appellant and her husband's children have also established their respective homes on the said plot 1462, which has been in the possession of the Appellant's late husband's family for several generations as has also been conceded by the Respondent. That despite the above, the Respondent sued the Appellant vide Siaya Land Dispute Tribunal Claim No. 22 of 2002 seeking to evict her from plot 1462 on grounds that it is registered in his name, and the Tribunal did order that the Appellant be evicted therefrom by a decision delivered on the 12<sup>th</sup> day of February 2003, which decision was adopted as the judgment of the Magistrate's court on the 14<sup>th</sup> day of March 2006 vide Siaya Principal Magistrate's Court award No. 39 of 2003.

At the time the Respondent sued the Appellant before the tribunal, her prescriptive rights over plot 1462 had already crystallized such that he was no longer the owner of the parcel of land hence the filing by the Appellant of an Adverse Possession suit being Kisumu ELC Cause No. 49 of 2020 (O.S) which is pending determination.

However, on the 8<sup>th</sup> day of October 2020 the lower court ordered that the Appellant be immediately evicted from plot 1462 by having all the structures thereon pulled down despite the fact that the Judgment on which the Order of eviction is premised lapsed upon failure to execute it within 12 years of its issuance.

The Appellant and her family stand to suffer irreparable loss which would render this suit nugatory if she is to be evicted from plot 1462 before its determination as the same is her matrimonial home which has been extensively developed over the decades. The Appellant is willing and prepared to deposit security as this Honourable Court may direct pending the determination of the Appeal.

The orders sought herein will not prejudice the Respondent taking into account the fact that he has never been in occupation of plot 1462 and his candid admission that plot 1462 has been in the possession of the Appellant's late husband's family for a number of decades.

I have considered the application and do find that it is merited. It has been made without inordinate delay. Moreover, I do find that the appellant is likely to be evicted if an order of stay is not granted and therefore she is likely to suffer substantive loss, since the appellant is in possession of the portion of land and that the respondent is the registered owner, this is not a case where security should be provided.

The upshot of the above is that I do grant stay of execution of the Judgment vide Siaya MISC. Civil Application number 39 of 2003 pending hearing and determination of Appeal. Costs in the cause.

**DATED AND DELIVERED THIS 19<sup>th</sup> DAY OF OCTOBER, 2020.**

**A.O. OMBWAYO**

**ENVIRONMENT & LAND**

**JUDGE**

**In the presence of:**

