



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT EMBU**  
**MISCELLANEOUS APPLICATION 199 OF 2011**

**JACOB GITHINJI SHADRACK..... 1<sup>ST</sup> APPLICANT**

**JOYCE KANINI SHADRACK .....2<sup>ND</sup> APPLICANT**

**DAMARIS CIAKUTHIII SHADRACK ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**JANE WAMUNYU .....RESPONDENT**

**RULING**

This is the application dated 23/11/2011 brought under section 55(1) of the Judicature Act Cap.8 Laws of Kenya for Leave to institute contempt proceedings against the Respondent who has disobeyed the Honourable Court Orders issued on 8/9/2011 vide Senior Resident Magistrate's Court Wanguru Civil Case No.160/2010. It's supported by the grounds and affidavit of the Applicants. Its indicated that the lower Court in its Judgment issued a permanent injunction restraining the Defendant from entering, remaining on or in any way interfering with the suit land known as MWEA/NGUCWI/618. The said Order was served on the Respondent and she is apparently not obeying it.

The Respondent has filed a replying affidavit saying she has filed an Appeal No.101 of 2011 against the said Judgment. She has also filed an application for stay of execution of the decree pending hearing of the Appeal. She further states that the application is premature because Order 22 rule 82 Criminal Procedure rules has not been complied with.

Both Counsels filed written submissions reiterating the averments of their respective clients.

There is no dispute that there is a decree from Wanguru Senior Resident Magistrate's Court Civil Case No.160 of 2010. It's also true that the Respondent herein was dissatisfied with the Judgment and has filed an appeal against it.

It is also true that there is an application for stay of execution dated 26/8/2011 pending before the Wanguru Court. I am wondering why such an application has yet to be heard and determined. Unfortunately I do not have a copy of the Proceedings to tell who was in occupation at the time of the Judgment and who is in occupation now. If it's the Respondent in possession as is alleged then an application for her eviction should have been made before the issuing Court. And if it's the Applicant in possession then the Applicant ought to have given specifics of what the Respondent has been doing. Has she reentered the land? Has she refused to move from the land? Is she cultivating? And on what dates was this being done. Apparently there is no stay of execution granted in either the lower Court or the High Court. The Applicants should be interested in executing the decree which they have, which they appear not interested in.

For Leave to institute contempt proceedings to be granted the Applicant has to demonstrate that there is real breach of the Order of the Court. I do find that the Applicant herein has not demonstrated that breach.

I therefore find this application lacking in merit and dismiss it with costs.

**DELIVERED, SIGNED AND DATED AT EMBU THIS 4<sup>TH</sup> DAY OF JULY 2012**

**H.I. ONG'UDI**

**JUDGE**

**In the presence of;**

**Mr. Rorige for M/s Thungu for Applicants**

**M/s Muriithi for Respondents**

**Njue – C/c**