



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KWACH, AKIWUMI & SHAH, J.J.A.)

CIVIL APPLICATION NO. NAI. 76 OF 1997 (34/97 UR)

BETWEEN

1. MUGO WAITHAKA

2. NJIHIA MUGO

3. NDUNGU MUGO

4. MWANGI MUGO ..... APPLICANTS

AND

MWAURA GITAU ..... RESPONDENT

**(An application for Variation/Rescinding of this honourable court's Ruling dated 11th April, 1997 and for stay of execution pending an Appeal against the Judgment/Decree of the High Court of Kenya at Nakuru (Justice Rimita) dated 5th day of February, 1996 in H.C.C.C. NO. 111 OF 1989)**

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**RULING OF THE COURT**

The present application has been brought under Rules 56(2) and 5(2) for a variation of our order of 11th April, 1997 and a stay of execution pending appeal. Rule 56(2) must be read together with read together with Rule 56(1) whereunder a variation of a previous order can only be sought -

(a)if the order was one extending time for doing an act or

(b)the order was one permitting the doing of some act. But the grounds for seeking the variation is not one of the conditions set out in Rules 56(1). It is rather that this court did not appreciate the fact that the Applicants were actually in occupation of the suit land. We have no jurisdiction on the basis of the present application to hear this application. It is we par an attempt to make us revise our previous order of 11th April, 1997 which is also an abuse of this court's process. As regards the application for stay, our ruling of 11th April, 1997 speaks for itself and the relief sought thereunder must also fail.

The respondent will have his costs for this application assessed at Shs.7,000/= to be paid within 7 days and in default execution to issue.

**Dated and delivered at Nairobi this 28th day of April, 1997.**

**R. O. KWACH**

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**JUDGE OF APPEAL**

**A. M. AKIWUMI**

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**JUDGE OF APPEAL**

**A. B. SHAH**

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**JUDGE OF APPEAL**

**I certify that this is a true copy of the original.**

**DEPUTY REGISTRAR.**