



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KAJIADO**

**ELC CASE NO. 888 OF 2017**

**( Formerly Machako ELC 31 of 2009)**

**FRANK MWANGI MATHEWS.....PLAINTIFF**

**VERSUS**

**ELIZABETH HANNAH WAITHERA.....1<sup>ST</sup> DEFENDANT**

**SOIL MERCHANT (K).....2<sup>ND</sup> DEFENDANT**

**STEPHEN MWANGI NDERITU.....3<sup>RD</sup> DEFENDANT**

**NICHOLAS MENENE KIMATU.....4<sup>TH</sup> DEFENDANT**

**REUBEN KARIUKI NGURUKU.....5<sup>TH</sup> DEFENDANT**

**MARY NGIMA KARANJA.....6<sup>TH</sup> DEFENDANT**

**JULIUS WAGACHA NDUNG’U.....7<sup>TH</sup> DEFENDANT**

**MARGARET NYAMBURA TIPIS.....8<sup>TH</sup> DEFENDANT**

**JANE WAMBETI RIUNGU.....9<sup>TH</sup> DEFENDANT**

**PETER WILFRED KAYE.....10<sup>TH</sup> DEFENDANT**

**OKWOYO KEGARA PETER.....11<sup>TH</sup> DEFENDANT**

**GEORGE GICHIRU NDERITU.....12<sup>TH</sup> DEFENDANT**

**JAMES OURU OSUMO.....13<sup>TH</sup> DEFENDANT**

**GODWIN OMONDI OJWANG.....14<sup>TH</sup> DEFENDANT**

**MORRIS KAMAU NDUATI.....15<sup>TH</sup> DEFENDANT**

**AILEEN MARITHA OMBATI.....16<sup>TH</sup> DEFENDANT**

**WILFRED MBOYA OSUMO.....17<sup>TH</sup> DEFENDANT**

**PAULINE GATHIGIA NDIRAGU.....18<sup>TH</sup> DEFENDANT**

**ESTHER MUTINGO WANGOMBE.....19<sup>TH</sup> DEFENDANT**

JOHN KINIU MUSAU.....20<sup>TH</sup> DEFENDANT

IRENE MURUGI KABUYA.....21<sup>ST</sup> DEFENDANT

GEORGE GATURU NDIRITU.....22<sup>ND</sup> DEFENDANT

EVANS LUSIGI MUGERA.....23<sup>RD</sup> DEFENDANT

### RULING

What is before me for determination is the 2<sup>nd</sup> Defendant's Notice of Motion application dated the 9<sup>th</sup> November, 2018 brought pursuant to Order 22 Rule 25 of the Civil Procedure Rules 2010, Sections 1A and 1B of the Civil Procedure Act; Section 3 of the Environment and Land Court Act and all the other enabling provisions of the law. The Application seeks the following Orders:

1. Spent
2. Spent
3. Upon granting prayers one and two above, the Honourable Court be pleased to grant an Order of Stay of proceedings in this suit pending the hearing and determination of the Appeal.
4. The costs of the suit be provided for:

The application is premised on the summarized grounds that the 2<sup>nd</sup> Defendant filed an application in Court whose Ruling was delivered on the 29<sup>th</sup> September, 2018. The 2<sup>nd</sup> Defendant is dissatisfied with the Ruling and has appealed against it. The Appeal will be rendered nugatory if the orders sought herein are not granted.

The application is supported by the affidavit of SAMUEL NJENGA KANYORO who is a director to the 2<sup>nd</sup> Defendant. He avers that the Honourable Court has made further orders directing parties to comply with directions of the Ruling which will really prejudice the Appeal which has high chances of success.

The application was not opposed by any of the Defendants.

The 1<sup>st</sup> and 2<sup>nd</sup> Defendants filed their respective submissions which I have duly considered

#### **Analysis and Determination**

Upon consideration of the material presented in respect of the instant application, the only issue for determination is whether there should be a stay of proceedings pending the outcome of the Appeal.

Insofar as this application seeking to stay proceedings is not opposed, I wish to delve into whether it is merited or not.

I note the Applicant has relied on Order 22 rule 25 of the Civil Procedure Rules that provides as follows: ' **Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.** ' ?

In the case of **Global Tours & Travels Limited; Nairobi HC Winding Up Cause No. 43 of 2000** Ringera J as he then was, made the following observation as it relates to staying proceedings pending appeal;

**"As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously"**

In this suit, the Applicant in compliance with the Order of the Court dated the 29<sup>th</sup> September, 2018, proceeded and filed its Defence on 9<sup>th</sup> November, 2018 after filing a Notice of Appeal. The Applicant in the current application is claiming it is dissatisfied with the Ruling of the Court and seeks to Appeal and yet it has already implemented the said Court Order. Bearing in mind the age of this suit and the number of parties herein, I am of the view that since the Applicant has already filed its Defence, it is properly on record and direct the matter to be set

down for hearing.

In the circumstances, I find the instant application unmerited and will dismiss it.

Costs in the cause.

**Dated and delivered at Kajiado this 21<sup>st</sup> Day of March, 2019**

**CHRISTINE OCHIENG**

**JUDGE**