



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 291 OF 2014**

**MUHU HOLDINGS LTD.....1<sup>ST</sup> PLAINTIFF**

**DURURUMO ESTATE LTD.....2<sup>ND</sup> PLAINTIFF**

**SERAH MWERU MUHU.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**ACHINA NANGOMO.....1<sup>ST</sup> DEFENDANT**

**LORIS AKUPE.....2<sup>ND</sup> DEFENDANT**

**JACKSON LOPUKE.....3<sup>RD</sup> DEFENDANT**

**RULING**

***(Application for stay of execution pending appeal; respondent obtaining judgment inter alia for the eviction of the applicants; applicants now seeking stay pending appeal; Notice of Appeal filed out of time; there being no competent Notice of Appeal, the application for stay is incompetent and is dismissed with costs)***

1. The application before me is that dated 19 December 2018 filed by the defendants in this suit. It seeks orders that there be a stay of execution of the decree and judgment of this court delivered on 21 November 2018 pending hearing and determination of an appeal before the Court of Appeal. The application is opposed.

2. The brief background leading to the subject application is that this suit was filed on 14 October 2014, through which the plaintiffs/respondents, sought orders that the defendants/applicants be evicted from the land LR No. 11791 (popularly known as Dururumo Farm). The respondents also wanted general damages for trespass and malicious damage, mesne profits, and a permanent injunction against the applicants. The applicants filed a defence and counterclaim. Inter alia they averred that they have been in possession of the suit land for a long time and contended that they are entitled to the land through the doctrine of adverse possession.

3. I heard the case and delivered judgment on 21 November 2018. In my assessment of the case, the applicants could not succeed in their claim for adverse possession, since they were former employees of the respondents, and thus were in possession of the land by the permission of the respondents. I dismissed the counterclaim. I held in favour of the respondents and further ordered the applicants to each pay a sum of Kshs. 10,000/= as general damages for trespass. I granted the respondents orders of eviction and permanently restrained the applicants from the suit land.

4. On 6 December 2018, the applicants filed their Notice of Appeal dated 5 December 2018. It is 6 December 2018 that the Notice of Appeal is deemed as lodged, for that is the day that it was paid for and received in court; It is not the date that the Notice of Appeal bears. The Notice of Appeal in the record shows that it was lodged on 10 December 2018, but that is erroneous, because as I have said, it is the date that the said Notice of Appeal is paid for and received in court which is material. I will thus consider the Notice of Appeal as lodged on 6 December 2018. Thereafter on 20 December 2018, this application was filed. There are three supporting affidavits sworn by Loris Akope, Achina Nangomo, and Jackson Lopuke, on behalf of the applicants. The affidavits are the same in all respects. They state that they face imminent eviction following the judgment and that they have no alternative place to reside. They aver that they stand to suffer irreparably if the orders sought are not granted.

5. The replying affidavit has been sworn by Virginia Wanjiru Muhu, a director of the 1<sup>st</sup> respondent. She has deposed inter alia that the applicants have a misconstrued belief that they are entitled to the suit land by virtue of their employment. She has stated that after a long court battle they are entitled to the fruits of their judgment.

6. As a threshold point, I can only entertain this application if I am persuaded that the applicants have filed a proper Notice of Appeal, for it will be pointless for me to grant a stay pending appeal when in fact there is no proper Notice of Appeal. Pursuant to the provisions of Rule 75 (2) of the Court of Appeal Rules, a notice of appeal is to be lodged within 14 days of the date of the decision against which it is desired to appeal. The judgment herein was delivered on 21 November 2018, and it therefore means that 14 days lapsed on 5 December 2018. The Notice of Appeal in this case was lodged on 6 December 2018, which was one day late following the provisions of Section 57(a), as read with Section 57 (d), of the Interpretation and General Provisions Act, Cap 2, Laws of Kenya, which prescribe how days are to be computed. I have no application before me for extension of time of the Notice of Appeal. It therefore means that the Notice of Appeal is incompetent for being out of time and cannot sustain an appeal before the Court of Appeal. That being the case, it cannot be said that I have a competent application for stay pending appeal, for there is actually nothing that can be preferred to the Court of Appeal on the basis of the incompetent Notice of Appeal.

7. Given the above, it is not necessary for me to delve into the merits or otherwise of the application, for I will merely be conducting an academic exercise, there being no competent Notice of Appeal.

8. For the above reasons, the application dated 19 December 2018 is hereby dismissed with costs.

9. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 9<sup>th</sup> day of April 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of : -**

The applicants acting in person.

Mrs. Gatei for the respondents.

Court Assistants :Janepher Nelima/Kemboi

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**