



**REPUBLIC OF KENYA**

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

**MISC APPLICATION NO. 32 OF 2018**

**TABITHA KARENGEA MITHIKA ..... 1<sup>ST</sup> APPLICANT**

**FESTUS MURIIRA MITHIKA ..... 2<sup>ND</sup> APPLICANT**

**CHRISTOPHER KABERIA MITHIKA ..... 3<sup>RD</sup> APPLICANT**

**VERSUS**

**LINGERA KANAKE ..... RESPONDENT**

**RULING**

1. This ruling is in respect of the application filed on 18.12.2018 where applicants are seeking the following orders:

(i) Spent.

(ii) That this court be pleased to extend time for the applicants to file an appeal against the ruling of the Senior Resident magistrate delivered on 30<sup>th</sup> October, 2018 in Maua Chief Magistrate's Civil Case No. 230 of 2013.

(iii) That this court do grant stay of execution of the ruling delivered on 30<sup>th</sup> October, 2018 in Maua Chief Magistrates civil case NO. 230 of 2013 pending the hearing and determination of this application.

(iv) That this honorable court do grant stay of execution of the ruling delivered on 30<sup>th</sup> October, 2018 in Maua Chief Magistrate's Civil Case No. 230 of 2013 pending the filing, hearing and determination of the applicant's proposed appeal.

(v) That the costs of this application be in the appeal.

2. The grounds in support of the application are stated on the face of the application and in the supporting affidavit of the 3 applicants.

3. The respondent has opposed the application via his replying affidavit filed on 27.2.2019.

4. I have considered all the arguments raised herein. It appears that in the ruling delivered on 30.10.2018 the court considered the matter was resolved through the surveyors report.

5. The applicants allege that it was erroneous for the court to adopt and rely on the surveyors report while respondent's side aver that the dispute was a boundary one hence the court was right in determining the matter via surveyor's report.

6. I do not have the lower court's record, including the pleadings. However I do note that the decision of the lower court will entail the relocation of the applicants who therefore may stand to suffer some substantial degree of loss of their homes.

7. However, no explanation has been advanced as to why the appeal was not filed on time yet the trial court had given a stay of 30 days.

8. Nevertheless, I do find that the delay in filing the application is not inordinate since there was a lapse of only 1 month and 17 days from the time of delivery of the ruling to the date of filing the present application.

9. I hence allow the application on the following terms;

(1) Prayer 2 and 4 are allowed whereby the applicants are to deposit a sum of Shs.50,000 in court as security within 30 days from

date of delivery of this ruling failure to which the order for stay shall lapse.

(2) The stay granted in terms of prayer 4 shall remain in force for a period of 1 year if there is compliance on the issue of deposit of Kshs.50,000.

(3) The costs of the application shall abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 22<sup>ND</sup> MAY, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Rimita D for applicants

Karanja holding brief for Mbaabu Inoti for respondent

All applicants

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**