



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 09 OF 2018(OS)**

**IN THE MATTER OF THE LIMITATION OF ACTIONS ACT, CAP 22, SECTION 7, 37 & 38**

**AND**

**IN THE MATTER OF LAND REGISTRATION ACT (NO. 3 OF 2012) AND LAND ACT (NO. 6 OF 2012)**

**AND**

**IN THE MATTER OF AN APPLICATION BY LOISE MUTHONI NJAGI UNDER THE LIMITATION OF ACTIONS ACT CAP 22 LAWS OF KENYA THAT SHE BE REGISTERED AS PROPRIETOR OF PART MEASURING APPROXIMATELY 4.75 ACRES OR THEREABOUT OF LAND PARCEL NO. MAGUMONI/THUITA/1318**

**AND**

**FOR A DECLARATION TO THE LAND REGISTRAR UNDER SECTION 24 AND 28 OF LAND OF LAND REGISTRATION ACT (NO. 3 OF 2012) TO REGISTER THE APPLICANT AS THE PROPRIETOR OF PAT MEASURING APPROXIMATELY 4.75 ACRES OR THEREABOUT OF LR NO. MAGUMONI/THUITA/1318**

**LOISE MUTHONI NJAGI.....PLAINTIFF**

**VERSUS**

**MARGARET CIAMBAKA MUGAMBI.....DEFENDANT**

**RULING**

1. This application is dated **30<sup>th</sup> May, 2019**.
2. On **12<sup>th</sup> June, 2019**, this court delivered a ruling which is reproduced in full herebelow.

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LOISE MUTHONI NJAGI.....PLAINTIFF

VERSUS

MARGARET CIAMBAKA MUGAMBI.....DEFENDANT

RULING

3. This application is dated **30<sup>th</sup> May, 2019**.

4. On **12<sup>th</sup> June, 2019**, when the matter came up for interpartes hearing Mr. Atheru for the plaintiff and Miss Kiai for the defendant proffered a consent which they asked the court to adopt as its order. The consent is in the following form:

**“CONSENT**

1. The application dated 30<sup>th</sup> May, 2019 be and is hereby allowed in the following terms:-

- a. There be a stay of execution of judgment delivered by this honourable court on 22<sup>nd</sup> May, 2019 and any other consequential orders pending hearing and determination of the intended appeal.
- b. The defendant/applicant to file the said appeal within 30 days after being supplied with the certified copies of typed proceedings and judgment.
- c. In default of (b) above execution to issue.
- d. Costs of the said application shall be costs in the appeal.

**Dated the 12<sup>th</sup> day of June, 2019**

**Signed Atheru Adv for plaintiff/respondent**

**Signed Betty W. Kiai for Joe Kathungu & Co. Adv.**

5. I decline to adopt the consent in its present format as it goes against the provisions of order 42 rule 6, 2(b) of the Civil Procedure Rules. In lieu thereof, I substitute it to read as follows:

- a. The appellant is required to deposit with court as security the sum of Kshs. One Million (Kshs.1,000,000/=) within twenty one days of today FAILING which the stay of execution granted herein will automatically lapse.
- b. Subject to the provision of security as ordered above, stay of Execution of judgment delivered by this court on 22<sup>nd</sup> May, 2019 and any other consequential orders is GRANTED pending hearing and determination of the intended appeal.
- c. The defendant/applicant is ordered to file the intended appeal within 30 days of today FAILING which the stay granted herein shall stand vacated and, therefore, inconsequential.
- d. For avoidance of doubt, it is clarified that default in satisfying any of the orders granted herein shall render the stay granted herein automatically vacated.
- e. Costs of this application shall be in the cause.
- f. Parties to come to court for **directions on 23<sup>rd</sup> July, 2019**

Delivered in open Court at Chuka this **12<sup>th</sup> day of June, 2019** in the presence of:

CA: Ndegwa

Atheru for the Plaintiff/Respondent

Betty Kiai for the Defendant/Applicant

**P. M. NJOROGE,**

**JUDGE.**

3. On **23<sup>rd</sup> July, 2019**, M/s Kiai holding brief for Kathungu for the defendant told the court that an appeal was filed at Nyeri on **3<sup>rd</sup> July, 2019**. She told the court that the defendant had not deposited security as ordered by the court on **12<sup>th</sup> June, 2019**.

4. M/s Kithaka, holding brief for Atheru for the plaintiff, asked the court to note that as the defendant did not deposit security as required in this court's **ruling dated 12<sup>th</sup> June, 2019**, the court should confirm its orders and find that no stay of execution is in place.

5. In the circumstances, the stay granted on **12<sup>th</sup> June, 2019** has automatically lapsed and is no longer extant.

6. It is ordered as follows:

a. No stay of execution apposite to the judgment of the court delivered on **22<sup>nd</sup> May, 2019** exists.

b. Costs shall be in the cause.

**Delivered in open Court at Chuka this 23<sup>rd</sup> day of July, 2019 in the presence of:**

CA: Ndegwa

M/s Kithaka h/b Atheru for the plaintiff

M/s Kiai h/b Kathungu for the defendant

**P. M. NJOROGE,**

**JUDGE**