



**IN THE ENVIRONMENT & LAND COURT**

**AT MOMBASA**

**ELC CASE NO. 31 OF 2015**

**VERSUS**

**RULING**

*(Application for stay pending appeal; parties agreeing to stay but asking court to assess the security to be deposited; court gives **order for security of Kshs. 1,500,000/=**)*

**BAHATI PROPERTIES .....PLAINITFF**

**VERSUS**

**ATTORNEY GENERAL & 7 OTHERS.....DEFENDANTS**

1. Through an application dated 15 August 2019, the 2<sup>nd</sup> to 7<sup>th</sup> defendants have sought orders that there be a stay of execution of the decree herein pending appeal. The suit itself was commenced through a plaint vide which the plaintiff asserted ownership of the land parcel Kwale/Diani Beach Block/59 which it contended had been given a new number 149 and title to this parcel No. 149 fraudulently issued to the 2<sup>nd</sup> to 7<sup>th</sup> defendants. The applicants resisted the case while asserting that their title No. 149 was the good title. The matter was heard and judgment delivered on 27 June 2019 by my predecessor, Honourable Justice A. Omollo. The judgment was in favour of the plaintiff/respondent. Aggrieved, the applicants filed a Notice of Appeal and I am made to understand that an appeal has now been filed.

2. When this application came up for hearing on 24 October 2019, Mr. Magolo learned counsel for the applicants, and Mr. McCourt, learned counsel for the respondent, agreed as follows :-

*(a) That in the event that the appeal fails, the applicants be evicted forthwith.*

*(b) That the applicants will try their best to have the appeal heard as soon as possible.*

*(c) That the court do assess the security.*

3. It will therefore be observed that parties have more or less agreed that there be stay of execution pending appeal, but they could not agree on the security to be deposited as a condition for stay.

4. I have on my part considered the nature of the proceedings, the time that may be taken to hear the appeal, and all surrounding circumstances. My view, is that for the applicants to be entitled to stay, they need to deposit security in the form of a cash deposit of Kshs. 1, 500,000/=. If this sum of money is not deposited within 30 days from today, then the order of stay will lapse and the decree may be executed.

5. Orders accordingly.

**DATED, SIGNED and DELIVERED at MOMBASA this 30<sup>th</sup> day of October 2019.**

**MUNYAO SILA**

**JUDGE.**

**IN THE PRESENCE OF:**

Mr. Wafula holding brief for Mr Magolo for the applicants.

Mr Hamisi holding brief for Mr McCourt for the respondent.

Court assistant ; Koitamet