

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELCA CASE NO. 13 OF 2019

JOYCE MICHERE GITHINJI.....APPELLANT/APPLICANT

VERSUS

PATRICK NGARARIGA WANG'OMBE.....RESPONDENT

RULING

The applicant, Joyce Michere Githinji has moved this Court vide a Notice of Motion dated 24th June 2019 seeking orders inter alia for stay of execution of the decree issued on 25th January 2019 in PMCC No. 34 of 2018 (Wanguru) pending the hearing of this appeal. The application is supported by her own affidavit sworn the same date.

According to her, she was aggrieved by the judgment of the Court giving rise to the decree which is the subject of this appeal. She stated that unless the orders sought are granted, she will suffer irreparable loss. She annexed a copy of the decree and Memorandum of Appeal to her supporting affidavit.

The respondent filed a replying affidavit in opposition to the said application in which he stated that the application has been brought six months from the date of judgment and that the delay in bringing the application has not been explained. The respondent further stated that the orders being sought have been overtaken by events as he has already prepared the land in question in readiness for planting rice.

ANALYSIS AND DECISION

I have considered the affidavit evidence and the applicable law. The application before me is for staying pending appeal. The applicant has stated that the hearing of the suit proceeded Ex-parte and that she was not given a hearing and that unless the application is granted, she will suffer irreparable loss. The applicant is appealing the Ex-parte judgment of the learned magistrate delivered on 6th December 2018 and the dismissal order in respect of an application dated 22nd May 2019. Since the issue of service is in contention, it cannot be said with a degree of certainty that the application has been brought with undue delay. I am therefore satisfied that this application has been brought without undue delay. Regarding the second condition, I find that the applicant has not given any security that would ultimately be binding on him for the due performance of the decree should this appeal not succeed. However, I note that the applicant has raised a serious issue that she was not served with summons and other Court processes in the case before the Magistrate Court. In the best interest of justice, I find that the applicant has satisfied the Court that unless the application is allowed, she will suffer substantial loss and the appeal may be rendered nugatory.

Consequently, I allow the application in the following terms:

(1) An order of stay of execution of the decree in PMCC No. 34 of 2018 (Wanguru) issued on 28th January 2019 pending the hearing and determination of this appeal.

(2) The Hon. Deputy Registrar of this Court to make the necessary arrangement to facilitate the forwarding of the trial Court's file from Wanguru Law Courts to this Honourable Court.

(3) In order to fast-track this appeal, this matter shall be mentioned on 4th November 2019.

E.C. CHERONO

ELC JUDGE

25TH OCTOBER, 2019

In the presence of: