



REPUBLIC OF KENYA

IN THE ENVIRONMENTAL AND LAND COURT

AT KISUMU

MISC. APPLICATION NO. 27 OF 2019

RACHEL ODUMA JUMA.....APPLICANT

-VERSUS-

LUKE OMOLLO OKWIRI.....1ST RESPONDENT

MUNICIPAL COUNCIL OF KISUMU.....2ND RESPONDENT

RULING

The application coming to this court under the following:-

- 1. That there be an order of stay of execution of the judgment delivered on 30th May, 2019 by the Honourable Chief Magistrate, Mr. J. K. Ng'arng'ar in Kisumu CM (ELC) No. 36 of 2019; Luke Omollo Okwiri –Vs- Rachel Oduma Juma & The Municipal Council of Kisumu pending the hearing and determination of the intended appeal.**
- 2. That the time within which to file the Memorandum of Appeal and lodge the record of appeal be and is hereby extended and/or enlarged.**

The application is based on the grounds:

- a. That on 30th May, 2019, the Honourable Chief Magistrate, Mr. J. K. Ngarngar delivered judgement in favour of the 1st Respondent in Kisumu CM (ELC) No. 36 of 2017; Luke Omollo Okwiri –Vs- Rachael Oduma Juma & Municipal Council of Kisumu and found the Applicant guilty of trespass on part of all that parcel of land known as LR. No. KSM/MANYATTA 'A'/3903. The court further awarded costs to the 1st Respondent.**
- b. That upon delivery of the said judgement, the applicant informally applied for stay of execution pending the lodging of an appeal against the whole of the said judgement and was granted a stay of fifteen (15) days.**

In the supporting affidavit of Rachel Oduma Juma who states that upon delivery of judgment, her advocate obtained a stay of execution of 15 days thereafter the advocate brought those facts of judgement to her attention on 11th July, 2019 through a letter dated 30th May, 2019. The letter was delivered to her more than one (1) month after delivery of judgement and 3 weeks after expiry of the period of appeal.

That she was distraught at the turn of events and was not aware of what options she had legally and procedurally to move the court to seek redress against the said judgment noting that time granted had already lapsed.

That she was fully aware that on 22nd August, 2019, the 1st Respondent armed with Decree issued on even date, together with hired goons, descended on the suit property with all manner of weapons and tools and proceeded to demolish her toilet and bathroom and a semi-permanent house that had all been erected by her.

That further to the foregoing, the 1st Respondent proceeded and fenced off a portion of her permanent house where together with her family they have lived for almost thirty (30) years and as such, she is apprehensive that unless an order for extension and/or enlargement of time within which to appeal and an order for stay pending the hearing and determination of the intended appeal are granted, the 1st Respondent will proceed and demolish part of her family house.

That she had been advised by her advocated on record Messrs Oyombra & Associates Advocates which advice she believed to be true unless this Honourable court intervenes, together with her family they will be rendered homeless, their house will be structurally unfit to be

inhabited and/or repaired if the intended appeal is granted and the judgement delivered on 30th May, 2019 by the Honourable Chief Magistrate Mr. J. K. Ng'arng'ar in Kisumu CM (ELC) No. 36 of 2017; Luke Omollo Okwiri –Vs- Rachael Oduma Juma & Municipal Council of Kisumu is reversed in her favour rendering this application and the intended appeal nugatory.

That she had further been advised by her advocate on record which advice she verily believed to be sound and correct that her intended appeal against the judgement delivered on 30th May, 2019 by the Honourable Chief Magistrate Mr. J. K. Ng'arng'ar has got good chances of success.

That there will be no prejudice occasioned to the Respondents in the event that an order for stay of execution is granted and time within which to appeal is extended and/or enlarged.

In the replying affidavit of Luke Omollo Okwiri, he stated that the applicant participated fully in the case and therefore should not blame the respondent and should not stop the respondent from enjoying rights. Therefore, that the applicant has not explained the delay in filing the memorandum of appeal.

This court ordered the applicant to file supplementary affidavit with submissions within 7 days and the respondent to file and serve submissions within 7 days of service but the parties have not complied.

I am constrained to determine the dispute on available evidence. The available evidence is that judgement was delivered on 30th May, 2019. The applicant was given 15 days stay of execution pending appeal.

The advocate for the applicant wrote to the applicant immediately for intention to appeal. The same appear not to have been given. The applicant has engaged different advocates and appears to blame the previous advocate.

Cases of parties changing advocates and blaming their previous advocates are on the rise. It comes a time when the mistake of advocates can be visited on the client. Especially where the client appears not to have taken serious interest in the matter.

In this case, I do find that no sufficient explanation has been given for the delay as the applicant was informed by his advocates of the outcome of judgment in time.

I do dismiss the application for stay pending appeal and leave to file appeal out of time due to inordinate delay. Costs to the Respondent.

A. O. OMBWAYO

ENVIRONMENT & LAND - JUDGE

DATED AND DELIVERED THIS 22ND DAY OF NOVEMBER, 2019.

In presence of;

No appearance

No appearance

A.O. OMBWAYO

ENVIRONMENT & LAND – JUDGE