



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT MERU**

**ELC APPEAL NO. 60 OF 2019**

**AGNES MUCECE HUMPHREY.....1<sup>ST</sup> APPELLANT**

**JAPHET KOOME.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**SILAS KIAMBI M'RAIJI.....RESPONDENT**

***(being an appeal from judgment and orders of the honourable J. Irura***

***delivered on 23<sup>rd</sup> March 2019 at Nkubu civil Case no. 89 of 2007)***

**RULING**

1. The application dated 23.4.2019 seeks the following orders:

(i) Spent.

(ii) That the honourable court be pleased to stay execution of the judgment decree and all the consequential orders in Nkubu PMCC no. 89 of 2007 made on 27.3.2019 pending hearing and determination of this application inter-partes.

(iii) That the honourable court be pleased to stay execution of the judgment decree and all the consequential orders in Nkubu PMCC no. 89 of 2007 made on 27.3.2019 pending the hearing and determination of the appeal herein.

(iv) That this honourable court be pleased to issue further orders as it deems fit and just in the circumstances.

(v) That costs of this application be provided for

2. The application is supported by the following grounds:

(a) That the judgment in Nkubu PMCC no. 89 of 2007 was entered against the appellant on 27.3.2019.

(b) That the respondent is threatening to execute the said judgment against the appellant which will render the appellant's appeal nugatory if orders are not granted.

(c) That unless the orders sought herein of stay of execution of the said decree are issued, the appellants shall suffer irreparable loss and damage and shall be left destitute and homeless as they have no other place to call home.

3. The 1<sup>st</sup> Applicant has also filed a supporting affidavit where she has deposed that they were aggrieved by the judgment of the lower court and they have filed an appeal against the said judgment. She avers that their appeal has high chances of success and that if stay of execution against the said judgment is not issued the appeal shall be rendered nugatory and they will be left destitute and they will suffer irreparable loss and damage.

4. The respondent has filed a replying affidavit in opposition to the application where he avers that the application is incompetent and absolutely without merit, and that the judgment entered on 27.3.2019 by the learned trial magistrate in Nkubu PMCC 89/2007 was a good one without fault. He also stated that the appeal has no chances of succeeding. He argued that he bought the subject suit land more than ten

(10) years ago and had not been able to utilize the same because of interference from the appellants and the appellants stand to suffer no prejudice as they have their own land I.e. Abogeta/L-Kiungone/569 whereas on the other hand he would be greatly prejudiced by any stay of the judgment. He also stated that applicants/appellants have not offered any security as envisaged under the law.

5. Order **42 rule 6 of the Civil Procedure Rules** stipulate that no order for stay of execution shall be made unless, the court is satisfied that substantial loss may occur unless the order is made, that the application has been made without unreasonable delay and such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given by him or her.

6. The respondent has not disputed that appellant is on the suit land. It appears that the appellant was on the suit land for a period of 12 years whereby the Magistrate ruled that respondent was denied use of the land for all that time. I also find that appellants have not offered any security.

7. In the circumstances will grant a conditional stay in the following terms;

**1) There is to be a stay of execution of the judgment and decree in Nkubu PMCC no. 89 of 2007 for a period of One Year Only.**

**2) The applicant is to deposit a sum of Kshs.400,000 in this court as security within a period of 30 days failure to which the order for stay shall lapse.**

**3) The costs of this application shall be borne by the applicant.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4<sup>TH</sup> DECEMBER, 2019**

**IN THE PRESENCE OF:-**

C/A: Kananu

Ngaira holding brief for Mr. Mokuu for respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**