



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**MILIMANI LAW COURTS**

**ELC NO. 390 OF 2011**

**WANGARI NJUGUNA.....PLAINTIFF/APPLICANT**

**=VERSUS=**

**WAHU NGAE & 3 OTHERS.....DEFENDANTS/RESPONDENTS**

**RULING**

1. The applicant *Martha Wangari Njuguna* filed a Notice of Motion dated **13<sup>th</sup> September 2017**, in which she sought the following orders:-

- 1. That this matter be certified urgent and be dispensed with soonest.**
- 2. That the Honourable Court do hereby issue an Order evicting the remaining illegal tenant being the 1<sup>st</sup> Defendant/Respondent from the suit premises known as LR NO.KIGANJO/ GACHIKA/553.**
- 3. That the Settlement Agreement between the Plaintiff/Applicant and the wife to the 4<sup>th</sup> Defendant/Respondent (deceased) be upheld in Court.**
- 4. That the Honourable Court do hereby continue the instant matter considering that the defendant's application for stay of the eviction proceedings at the Court of Appeal has since been dismissed vide Civil Application No.128 of 2017 dated 20<sup>th</sup> July, 2017.**
- 5. That costs of this Application be in the cause.**

2. The applicant was the defendant in HCCC No. 3610 of 1991 (OS) where the plaintiff was Mwangi Mbothu. The subject of that suit was ***LR No.Kiganjo/Gachika/533***. The Plaintiff in that suit lost his case against the applicant herein. The applicant moved and filed the present suit against four defendants seeking orders of eviction. The respondents herein moved to the Court of Appeal and filed an application for injunction in respect of ***HCCC No.3610 of 1991(OS)*** pending appeal. They also sought stay of proceedings in this case pending the hearing and determination of Appeal against Judgement in ***HCCC No.3610 of 1991 (OS)***.

3. In a Ruling delivered on 19<sup>th</sup> June 2015, the Court of Appeal granted injunction in respect of ***HCCC No. 3610 of 1991 (OS)*** and further granted an order staying proceedings in this case pending hearing and determination of the intended appeal.

4. Before hearing of the applicant's application a preliminary objection was raised on behalf of the respondents on the ground that this court lacks jurisdiction to entertain the application. The Court directed parties to file written submissions in respect of the preliminary objection and the application itself. The applicant filed her submissions on 6<sup>th</sup> September 2017. The respondents filed their submissions on 18<sup>th</sup> December 2017.

5. I will first deal with the preliminary objection because if it is sustained, there will be no need to consider the application. There is no contention that the proceedings in this case were stayed by the Court of Appeal on 19<sup>th</sup> June 2015. The stay was to last until hearing and determination of the intended Appeal.

6. The applicant herein moved to file the present application on the basis that the respondent's application before the Court of Appeal which was seeking to have the appeal admitted out of time had been dismissed for non-attendance on the part of the applicant on 20<sup>th</sup> July 2017. It is important to note that notwithstanding dismissal of the respondent's application to have the appeal admitted out of time, the record of appeal had already been filed on 26<sup>th</sup> April 2017 and had been slated for hearing on 18<sup>th</sup> October 2017. When the parties to the appeal appeared before the Court of Appeal and explained the position, the Court of Appeal directed that the applicant's application before that Court which sought to set aside the orders of injunction of 19<sup>th</sup> June 2015 and those staying proceedings in this case be fixed for hearing on

priority basis. There is also pending before the Court of Appeal an application seeking to set aside the orders of 20<sup>th</sup> July 2017 which dismissed the respondent's application for admission of appeal out of time.

7. It is therefore clear that the order staying the proceedings herein pending hearing and determination of the intended appeal is still in force and therefore no proceedings can go on in this file in the face of that order. The applicant is alive to this fact that is why in her submissions, she is asking this court to set aside the injunction and stay orders granted on 19<sup>th</sup> June 2015. In the case of owners of **Motor Vessel "Lillian S" Vs Caltex Oil (Kenya)Ltd (1989) KLR 1** it was held thus:-

*“ Jurisdiction is everything without it, a court has no power to make one more step. When a court has no jurisdiction, there would be no basis for continuation of proceedings pending other evidence. A Court of Law downs tools in respect of a matter before it the moment it holds the opinion that it is without jurisdiction”.*

8. It is clear that I have no jurisdiction to entertain a matter where proceedings have been stayed by the Court of Appeal. The Appeal before the Court of Appeal is still pending. There are active applications arising from that appeal which are pending before the Court of Appeal. I therefore find that I have no jurisdiction to entertain the application dated 13<sup>th</sup> September 2017. The result of this is that the preliminary objection by the respondents is upheld. The applicant's application dated 13<sup>th</sup> September 2017 is struck out with costs to the Respondents.

It is so ordered.

**Dated, Signed and delivered at Nairobi on this 26<sup>th</sup> day of February ,2018.**

**E.O.OBAGA**

**JUDGE**

In the absence of parties who were aware of the date and time of delivery of Ruling.

Court Assistant: Kevin

**E.O.OBAGA**

**JUDGE**