



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT MERU

ELC CASE NO. 10 OF 2013

(FORMERLY EMBU H.C.C.C NO. 67 OF 2007)

(NOW CONSOLIDATED WITH MERU HCC NO. 179 OF 2014) (O.S)

GEORGE MUNDIA GICHERUPLAINTIFF

VERSUS

CELESTE NJUE ERENKANYA DEFENDANT

RULING

1. This ruling is in respect of the application filed on 20.2.2018 by the defendant. The application is brought under order 42 r 6 of the civil procedure rules and section 1A and 1B of the civil procedure Act.
2. Applicant/defendant is praying for a stay of execution of the judgment delivered on 15.11.2017 pending the hearing and determination of the intended appeal.
3. The application is supported by grounds set out on the face of the application. The Applicant, Peter Njagi Njue has also filed a supporting affidavit.
4. The application is opposed and was argued orally on 15.2.2018.
5. I have weighed all the arguments advanced herein.

“Order 42 rule 6 provides that “No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”.

6. The judgment herein was delivered on 15.11.2017 in the presence of Carl Peters Mbaabu holding brief for Kaumbi for defendant and B.G Kariuki for plaintiff. How comes the defence did not request for a stay of execution on that day. And how comes that the application for stay was only filed on the very last day of the term (20.12.2017).
7. **In High Court Civil Appeal No. 107 of 2015 Masisi Mwita Versus Damaris Wanjiku Njeri**

(Murang'a), the court cited the court of appeal case of **Butt versus Rent Restriction Tribunal** where it was stated that in considering an application of this nature **“The court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and its unique requirements”**.

8. I am aware that although this is an ELC case of 2013 and formerly H.C.C 69/2007 Embu, the dispute concerning the suit land has been existing for many decades, since 1973 or thereabout.

9. Against this background, the applicant ought to have demonstrated vigilance in taking the next cause of action immediately after 15.11.2017 instead of rushing to court when execution is under way.

10. Despite the foregoing and considering that land is an emotive matter in Kenya, I do grant a stay of execution for **14 days only**.

11. Applicant is condemned to pay costs of this application as well as costs arising from and or incidental to the process of execution so far undertaken.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 21ST DAY OF FEBRUARY, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Gichunge for plaintiff present

Mutuma holding brief for Kaumbi for defendant present

HON. L. N. MBUGUA

ELC JUDGE