



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

CIVIL APPEAL NO 90 OF 2012

MADARINA MWARI.....1ST APPELLANT

DICKSON KINJA.....2ND APPELLANT

VERSUS

JANE KATHURE EZEKIEL.....RESPONDENT

RULING

1. The application dated 23.11.2017 and filed on 29.11.2017 seeks orders of stay of execution of the orders given on 24th October 2017 directing the respondent/applicant to bear the costs of the suit. Applicant desires that the said orders be set aside, varied or vacated.
2. The grounds upon which the application is brought are that applicant was not given an opportunity to be heard and that the orders complained of are irregular. She further states that the orders were obtained fraudulently. She states that she is a widow with five children.
3. Applicant has also filed a supporting affidavit, where she avers that the orders given by the court on 24.10.2017 were obtained fraudulently, through concealment of material facts.
4. Grounds of opposition have been filed where by the appellants aver that the application amounts to an appeal against the court's judgment.
5. The brief history of this case is that there exists case no. PMCC 108 of 2011 at Nkubu court where appellant in the present case was the defendant whereas the respondent in this suit was the plaintiff. The plaintiff had sought for eviction orders at the interlocutory stage which orders were allowed vide the magistrate's ruling dated 26.9.2012. It is this which triggered the present appeal whereby I delivered a judgment on 24.10.2017 in favour of the appellants (defendants).
6. The application brought forth by the respondent seeks to vary the judgment in so far as the respondent was condemned to pay costs of the suit.
7. Submissions have been filed in respect of the present application. I find that though no particular provisions of the law have been cited upon which the application is filed, it is quite apparent that the prayers are couched in the format of an appeal.
8. I am therefore in agreement with the appellants submissions that the issues raised in the application ought to be raised in the appellate forum and not before this court.
9. The application dated 23.11.2017 is hereby dismissed. The respondent (in the suit) Jane Kathure Ezekiel is condemned to pay costs of the present application.
- 10. I further direct that the lower court file Nkubu PMCC No. 108/11 be remitted back forthwith to Nkubu Magistrates court for determination.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 18th APRIL, 2018 IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

H. Gitonga for appellant

Respondent absent

HON. LUCY. N. MBUGUA

ELC JUDGE