



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC. CASE NO. 650 OF 2012

GRACE JENDEKA LUSIOLA.....PLAINTIFF

VERSUS

ELIAS MBAU NDUNGU.....1ST DEFENDANT

PAUL IRUNGU KAMAU.....2ND DEFENDANT

JOHN MUNENE NYAGAH.....3RD DEFENDANT

JENNIFER GATHONI.....4TH DEFENDANT

FLORENCE WAKONYO.....5TH DEFENDANT

SAMUEL WAMBUGU.....6TH DEFENDANT

MARY NJERI.....7TH DEFENDANT

RAPHAEL MUIRU.....8TH DEFENDANT

JOHN NGUGI NJUGUNA.....9TH DEFENDANT

FLORENCE MURIITHI.....10TH DEFENDANT

GEORGE KIURA MUGO.....11TH DEFENDANT

RAPHAEL NDIRANGU MATU.....12TH DEFENDANT

JACINTA W KARANJA.....13TH DEFENDANT

JAMES KAMAU KITATI.....14TH DEFENDANT

VIRGINIA W KARANJA.....15TH DEFENDANT

PAUL NGANGA NDERITU.....16TH DEFENDANT

HENRY GITAU NDIRANGU.....17TH DEFENDANT

DORIS K. MAITIMA.....18TH DEFENDANT

JOSEPH MUNYAO KATIKU.....19TH DEFENDANT

RULING

Through the application dated 20/6/2018, the Defendants seek stay of execution of the decree and judgment delivered by this court on 30/5/2018. They also seek to appoint a new advocate. They argue that they have commenced the process of appealing to the Court of Appeal by filing a Notice of Appeal. They argue that they stand to suffer great loss if execution of the decree proceeds since they have developed residential buildings on the suit property and that their appeal will be rendered nugatory if execution proceeds. They attached a copy of the Notice of Appeal filed on 19/6/2018 which is undated. The Deputy Registrar endorsed on it that it was lodged on 19/6/2018.

The Plaintiff filed a Notice of Preliminary Objection urging that the Notice of Appeal is time barred by Rule 75 of the Court of Appeal Rules which requires a notice of appeal to be filed within 14 days of the date of the judgement.

Parties made oral submissions. The Defendants urged that there was no delay in filing the application and that they are willing to offer security for the performance of the decree. The Defendants urged that there were two public holidays on 1/6/2018 and 15/6/2018 which should not be included in computing the time within which to lodge an appeal.

The Defendants have filed another application in the Court of Appeal seeking orders of stay of execution. The advocate argued that the orders sought in the application for stay of execution before the Court of Appeal are different from those sought in this court. The Plaintiff relied on Rule 75 of the Court of Appeal Rules and urged that the Notice of Appeal was filed 21 days after judgement. The Plaintiff further submitted that the Defendants have sought similar orders from the Court of Appeal and that this court should dismiss the application. The court agrees with the Plaintiff that the Notice of Appeal was filed out of time.

Stay of execution pending appeal is discretionary and is governed by Order 42 Rule 6 of the Civil Procedure Rules. Sufficient cause has to be shown and the Applicant must show that he will suffer substantial loss. The application should be made without delay and the Applicant must furnish security as the court may impose.

Having considered the application the court is not satisfied that the Defendants have shown sufficient cause or provided security for the grant of the orders of stay of execution. The application is dismissed with costs to the Plaintiff. The Defendants are granted leave to appoint a new advocate.

Dated and delivered at Nairobi this 6th day of December 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Mureithi holding brief for Mr. Burugu for the Plaintiff

Mr. V. Owuor- Court Assistant

No appearance for the Defendants