



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. MISC APPLICATION NO. 205 OF 2016**

**NJERI KIRIBA.....PLAINTIFF**

**-VERSUS-**

**KENYA IHENYA COMPANY LTD.....DEFENDANT**

**RULING**

The Defendant seeks stay of execution of this court's judgement delivered on 14/11/2017 through the application dated 10/1/2018. Being dissatisfied with this court's judgement, the Defendant filed a Notice of Appeal in the Court of Appeal on 16/11/2017. The application is made on the grounds that Mary Muthoni Ndegwa who is the registered owner Nairobi Block 124/144 ("the Suit Property") stands to be dispossessed of her property. The Applicant contends that the Chief Land Registrar was not a party to the proceedings hence cannot deregister Mary Muthoni Ndegwa as the owner of the Suit Property. The application is supported by the affidavit of Mary Muthoni Ndegwa. She urges that the orders given by the court are detrimental to her as the *bona fide* purchaser and the registered owner of the Suit Property and that she stands to suffer irreparable loss unless the decree is stayed. She further argues that the court granted orders which were not sought in the suit.

The Plaintiff filed a replying affidavit on 23/7/2018 in opposition to the application. She urged that the application for stay of execution is made in bad faith and meant to frustrate her because of her old age. She is 93 years old. She further argues that the Defendant has introduced a stranger, Mary Muthoni Ndegwa and that if it allocated the same plot to two different people then it ought to have compensated this person. She claims she bought the land from the Defendant who has been oppressing her and threatening to evict her because she is a pauper and of advanced age. She further argues that she has been living on the suit land and has never heard of Mary Muthoni Ndegwa who claims that the judgement delivered is detrimental to her. She urged the court to dismiss the application.

The Defendant filed submissions. The Defendant challenges the court for issuing the orders which were not sought. The Defendant relied on the case of *Stanley Karanja Wainaina and Another v Ridon Anyangu Mutubwa [2016] eKLR* where the court restated the conditions for grant of stay of execution pending appeal. The conditions are that the application must be made without undue delay, the applicants must demonstrate that they will suffer substantial loss if the order is not granted and furnish security as the court may direct.

The court's judgment was delivered on 14/11/2017. The notice of Appeal was filed on 16/11/2017 and another Notice of Appeal in the name of Mary Muthoni Ndegwa was filed on 29/11/2017. There was delay in filing this application until 10/1/2018. The Applicant has failed to demonstrate that she will suffer substantial loss if the orders are not granted. The Plaintiff deponed in her affidavit that she has been in occupation of the Suit property. This was not controverted by the Applicant.

The court finds that the application does not meet the conditions for the grant of stay of execution pending appeal. The application dated 20/12/2017 is dismissed with costs to the Plaintiff.

**Dated and delivered at Nairobi this 6<sup>th</sup> day of December 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

Ms. Wathui holding brief for Mr. Gitau for the Defendant/Applicant

Mr. V. Owuor- Court Assistant

No appearance for the Plaintiff