



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT MERU**  
**MISC ELC NO. 102 OF 2002**  
**EDWARD MUGAMBI .....1<sup>ST</sup> PLAINTIFF**  
**JACOB KAIRANYA RAIBUNI .....2<sup>ND</sup> PLAINTIFF**  
**VERSUS**  
**JASON MATHIU MWONGERA.....DEFENDANT**

**R U L I N G**

1. The Notice of Motion dated 4<sup>th</sup> September, 2017 seeks the following orders:-

1. Spent.

2. The honourable Court be pleased to grant a temporary stay of execution of the decree herein pending hearing and determination of this application.

3. The Honourable Court be pleased to stay the decree here in pending hearing and determination of Civil Appeal No. 52/2017 at Nyeri.

2. The Application is based on the grounds that:-

1. The Appellant has filed an appeal in the Court of Appeal and he is apprehensive that the Decree /holder is in the process of executing the decree by evicting him from the Suitland since the grace period given by the Court (6 months) is expiring on 13/9/2017.

2. If the decree is not forthwith stayed, the applicant is likely to suffer substantial loss as his home will be demolished and he will be rendered destitute.

3. The Application is supported by the Affidavit of Edward Mugambi Kairanya sworn on 4<sup>th</sup> September, 2017 and has the following grounds:-

1. That he is the Applicant herein and thus competent to swear this affidavit.

2. That Applicant was dissatisfied by the judgment delivered on 13/3/2017 and as such he filed an appeal being C.A No. 52 /2017 Nyeri (Annexed is the Memorandum of Appeal).

3. That this Court had decreed that Applicant be evicted from the Suitland upon expiry of 6 months which period expires on 13/09/2017.

4. That Applicant hoped that the appeal would be heard within the 6 months.

5. That Applicant has a home on the Suitland and he is apprehensive that the respondent is preparing to demolish it upon the expiry of the grace period given by the Court.

6. That Applicant believes that his Appeal has very high chances of success and unless a stay is granted the appeal will be rendered nugatory and he will suffer irreparable loss as he will lose all the developments he made on the Suitland for the last 35 years and also will be rendered destitute along with his family.

4. Respondent has also filed a Replying Affidavit where he has deponed us follows:-

1. That in the main suit herein the Applicant had by Originating Summons dated 19<sup>th</sup> June, 2002 sought inter-lia a declaration that he has acquired Respondent's land LR No. Gakawa/Kahurura Block 3/203 by adverse possession that he is entitled to be registered a proprietor of the same and that the Respondent holds the title in trust for him.

2. That on 13:03:17 the Applicants suit was dismissed with costs and the Court ordered Applicant and any other person laying claim under him on land No. Gakawa/Kahurura/Block 3/203 to vacate within 6months from the date of delivery of judgment failing which the OCS in charge of the area where the suit land is situated shall facilitate the opposite eviction.

3. That the Respondent has already had the title of the land reinstated in his name, which earlier the Applicant had fraudulently and illegally transferred to one Juliano Muthomi Ndege, one M'Imanene M'Marete (DW2) and his family, to whom the Applicant had purportedly sold part of the suit land, that these people have already vacated the land and what remains onto that land belonging to the Applicant is a temporary structure, whose photograph is annexed here in.

4. That execution of the decree herein is complete.

5. That the application herein should be considered as an afterthought and delaying tactics as it was filed on 04.09.2017 only 9 days to the expiry of the 6 months grace period given by the court.

6. That further, the application is meant to obstruct execution and prolong this matter, after applicant lost against an order of his eviction from the same land in Court of Appeal C.A No. 286 of 2002. (Annexed herein is ruling of Kasango Judge dated 20:11:2009 marked JMM 3 to that effect.

7. That therefore this application has no merits and is an abuse of court process and should be dismissed.

5. On 18:09:17, the Court gave direction that the application was be canvassed by way of Written Submissions. The Applicant was to file his Submission by 30:09:17. There was no compliance, not even by 06:11:17, the date the matter was listed to give a date for ruling. On 6:11:17, the Respondent informed the Court that they could not file any Submissions as they had nothing to respond to since applicants had not filed any Submissions.

6. I therefore find that the Applicant has not taken steps to prosecute their application. There is no reasonable explanation or any explanation at all as to why Applicant has not complied with the Court's orders of 18:09:17 yet the application was filed under a Certificate of Urgency.

7. In the circumstances, I proceed to dismiss the application of 04:09:17 with costs to Respondent.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 13<sup>TH</sup> DAY OF DECEMBER, 2017 IN THE PRESENCE OF:-**

CA: Janet

Kimathi K.for Plaintiff/Applicant absent

Mburugu for Defendant /Respondent Present

Applicant (1<sup>st</sup> Plaintiff) Present

**HON. L. N. MBUGUA**

**ELC JUDGE**