



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
MILIMANI LAW COURTS
ELC CIVIL APPEAL NO. 34 OF 2015

MILKA WAMBUI KUNGU.....APPELLANT

VERSUS

SIMON WATHERU NDUNGU.....1ST RESPONDENT

ARTHUR NG'ANG'A GITUKU.....2ND RESPONDENT

PATRICIAH NYOKABI CHEGE.....3RD RESPONDENT

RULING

Coming up for determination is the 2nd and 3rd Respondent's Preliminary Objection dated **16th June 2015**. The pray that the suit herein be struck out on the ground that there is a pending suit **ELC No. 388 of 2015** wherein the Appellant herein has sought similar orders against the Respondents as in the suit herein, thereby offending the provisions of **Section 6 of the Civil Procedure Rules**.

The Appellant swore a Replying Affidavit on **15th September 2015** in response to the objection. The Appellant admitted that she filed an appeal **No. 388 of 2015**, wherein she obtained an order of temporary stay of execution of the Judgment of the lower court delivered on **4th May 2015** in **CMCC No. 133 of 2014**. However, she learnt that her advocate on record was not in possession of a Current Practising Certificate for the year **2015**. As a result, the said advocate filed a notice of withdrawal to the Deputy Registrar of the Court on **4th June 2015**. The Appellant maintained that she had approached the Court in good faith seeking assistance in recovery of her matrimonial home.

I have perused the Appellant's documents annexed to her affidavit as well as the pleadings in the Court file. Judgment in the lower Court was entered against the Appellant on **4th May 2014**. Being aggrieved the Appellant filed an appeal **ELC Case No. 388 of 2015** where she obtained temporary orders of stay of execution on **13th May 2015**. Subsequently, the Appellant's advocates filed a Notice of Withdrawal of Suit dated **4th June 2015** together with a letter addressed to the Deputy Registrar requesting that the entire appeal and consequential orders be withdrawn. By an order of the Deputy Registrar of this Court on **10th August 2015** the entire suit was withdrawn with no order as to costs.

The instant Appeal is dated and filed on **4th June 2015**. It is apparent that the Appellant's advocate filed a notice of withdrawal of **ELC Case No. 388 of 2015**, and instituted this appeal on the same date. This appeal was thus filed before the earlier one was formally withdrawn. In the circumstances, there were parallel appeals though a request for the withdrawal of one appeal was placed but not acted upon. This

explains why the Respondents filed this objection.

The earlier suit having been formally withdrawn, this preliminary objection has been overtaken by events and the same is hereby dismissed. However, the court finds that the Appellant shall bear the costs.

It is so ordered.

Dated, Signed and Delivered this *15th* day of *April, 2016*

L. GACHERU

JUDGE

In the Presence of:-

Present in person Appellant (Milka Wambui Kungu)

None attendance for the 1st Respondent

None attendance for the 2nd and 3rd Respondents

Lerionka: Court Clerk

L. GACHERU

JUDGE

Court: Ruling read in open Court in the presence of the appellant and absence of Respondents.

L. GACHERU

JUDGE