



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC CASE NO. 354 OF 2015**

**KOMO CHEGE & 6 OTHERS ..... PLAINTIFFS**

**VS**

**JOSEPH WANJIKU MWANGI & 15 OTHERS..... DEFENDANTS**

**RULING**

***(Application to extend time to deposit money ordered to be deposited as security; application allowed)***

1.The application before me is that dated 27 May 2016 filed by the 1st-8th and 11th -15th defendants. They want orders of extension of time to comply with my ruling of 1 April 2016. That ruling was in respect of an application for stay pending appeal. In this suit, the plaintiffs had sought orders inter alia to have the defendants evicted from certain land parcels which they use as motor car repair garages. The plaintiffs claim that the properties fall in an area that is zoned to be a residential area and therefore the defendants had no mandate to utilize the same as garages. Together with the suit, the plaintiffs filed an application to have the applicants stopped from using the said properties as garages pending hearing of the case. I allowed that application for injunction. The applicants then preferred an appeal against that decision and asked me to give a stay of that ruling pending appeal. Through my ruling of 1 April 2016, I granted a stay subject to the condition that the applicants deposit security in the sum of Kshs. 1 Million within 14 days, the said sum to be deposited in court or in a joint interest earning account.

2.In this application, the applicants aver that the money was not deposited within the 14 day period, and they wish to have that time extended. Inter alia, it is claimed that the joint account opening efforts by counsel for the applicants were frustrated by inaction on the part of counsel for the respondents. In the supporting affidavit, it is averred inter alia that the account opening forms were sent to counsel for the respondent within time but they were not returned and the time for opening the account lapsed.

3. The application is opposed. It is averred that no bank forms were attached to the letter which purported to forward the same leading to counsel for the respondents writing a protest letter. Later other forms which were said to have been back-dated were forwarded but rejected by counsel for the respondents. It is their view that the applicants failed to abide by the court order and do not deserve an extension of time.

4. I took in the submissions of both Mr. Kahigah for the applicants and Mr. Morintat for the respondents. It appears as if there was some miscommunication between the two counsels on the opening of the joint account. In his submissions, Mr. Kahigah affirmed that the money was ready and available.

5. Extension of time is upon the discretion of the court. I do not see what harm the respondents will suffer if I am to extend time. In my discretion, I allow the application and extend time but only up to the close of

business of 22 July 2015. If the money is not deposited in a joint account or in court within that time, then the stay granted will lapse.

6. The applicants will however shoulder the costs of this application as the option to deposit the money in court was always available.

7. It is so ordered.

**Dated, signed and delivered in open court at Nakuru this 20<sup>th</sup> day of July, 2016**

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**NAKURU**

**In presence of : -**

Ms. Gitau holding brief for Mr. Kahigah for applicants.

Mr. Mwala for Mr. Morintat for respondents.

Court Assistant: Janet.

**MUNYAO SILA**

**JUDGE**

**ENVIRONMENT & LAND COURT**

**NAKURU**