



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT MERU**  
**LAND AND ENVIRONMENT COURT**  
**CIVIL APPEAL NO 36 OF 2015**

M'MUCHEKE M'MUBWIKA .....1<sup>ST</sup> APPELLANT  
MESHACK MURUNGI .....2<sup>ND</sup> APPELLANT  
STEPHEN MEEME.....3<sup>RD</sup> APPELLANT  
JULIUS KAARI MUCHEKE.....4<sup>TH</sup> APPELLANT

**VERSUS**

JANET KAUNANKU KITHIS.....1<sup>ST</sup> RESPONDENT  
SIMON MAORE.....2<sup>ND</sup> RESPONDENT

**RULING**

The application states that it is brought to Court Under Section 3 and 3 A of Cap. 21 and Order 22 Rule 50,51 and 53 CPR and Article 159 of the Constitution of Kenya. The application is dated 9/9/2015 and seeks orders :-

1. ***THAT this application be certified as urgent and the Honourable Court be pleased to hear it ex-parte in the first instance.***
2. ***THAT the Honourable Court be pleased to order a stay of execution of judgement and decree in Maua C.M.C.C NO. 43 OF 2011 pending the hearing and determination of this application.***
3. ***THAT the Honourable Court be pleased to order that of the 1<sup>st</sup> defendants Kshs. 937,300/= deposited in MAUA C.M.C.C No.43 of 2011 Kshs. 574,000/= be retained in Court as security for due performance incase the appellants appeal fails and the balance of Kshs. 363,300/= be released to the appellants pending hearing and determination of this appeal.***
4. ***THAT the Honourable Court be pleased to confirm prayer (2) supra upon inter parties hearing of this application.***
5. ***THAT Costs of this application be provided for:***

This application is supported by the affidavit of M'MUCHEKE M'MUBWIKA and JULIUS KARI MUCHEKE and has the following grounds:-

- i. *The appellants have filed this appeal which has high chances of success.*
- ii. *The appellants have proposed to offer security that is adequate to cover the respondents decree in the sub-ordinate suit.*
- iii. *If the orders sought are not allowed the respondent shall unjustly enrich themselves and may not be able to refund the appellants.*

Vide an application by way of Notice of Motion dated 9/9/2015, the applicant obtained conditional stay pending hearing of the application dated 12/8/2015. The Court issued the following Orders:-

1. *The applicant should deposit a sum of Kshs. 300,000/= with Court as security within 14 days of today failing which the conditional stay issued herein will lapse automatically.*
2. *Applicants to file and exchange written submissions regarding both applications , one dated 12.08.2015 and the other dated 9.9.2015, within 7 days and the respondents to file and exchange their Written Submissions with respect to the 2 applications within 7 days after service of the applicants' Written Submissions upon them.*
3. *Confirmation of filing of written submissions on 7.10.2015.*

The matter came up for confirmation of filing and exchange of Written Submission on 7/10/2015. Mr. Harun Gitonga pointed out that the applicants had not observed the orders issued by this Court on 16/9/2015 regarding filing and exchange of Submissions. He said that as he had not received the applicants' Submissions he was unable to file his Submissions which would have been a response to those ones of the applicant.

Mr. Gitonga also informed the Court that the applicants had not deposited a sum of Kshs. 300,000/= in Court as security as ordered by the Court.

The Applicants are not in Court. Their Advocate is also not in Court though he was aware that this matter was to be in Court today, 7/10/2015.

I find that the applicants have not observed the terms of the conditional stay granted to them which lapsed automatically 14 days after 16/9/2015 within which time they should have deposited in Court the amount of money the Court had stipulated. I also find that the applicants have failed to prosecute their application.

In the Circumstances, **the application is dismissed. Costs are awarded to the respondents.**

**Delivered in open Court at Meru this 8<sup>th</sup> day of October, 2015 in the presence of: -**

**Lilian /Daniel**

Harun Gitonga for Respondents

Kirimi Mbogo Absent for Applicants

**P. M. NJOROGE**

**JUDGE**