



REPUBLIC OF KENYA



KENYA LAW
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**Mukanda v Mutswenje (Civil Application 100 of 2021)
[2022] KECA 941 (KLR) (22 July 2022) (Order)**

Neutral citation: [2022] KECA 941 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT KISUMU
CIVIL APPLICATION 100 OF 2021
PO KIAGE, JA
JULY 22, 2022**

BETWEEN

FRANCIS MAKUBA MUKANDA. APPLICANT

AND

FELIX SAKWA MUTSWENJE. RESPONDENT

(Being an Application for stay of execution against the Decree of the Environment and Land Court in Kakamega (Matheka, J.) dated 28th February 2019 in ELC Case No. 507 of 2014)

ORDER

1. By a Notice of Motion dated 6th October 2021, the applicant, Francis Makuba Mukanda, seeks the following prayer in the main;
 - a) THAT this honourable court stays the execution of (sic) certificate of cost dated 10th day of September 2021 until my application dated 22nd day of June 2021 praying for enlargement and or extension of time within which leave be granted in Civil Application No 26 of 2019 and leave be granted to lodge and serve the Record of Appeal out of time are heard and determined.
2. This is a Rule 5 (2)(b) application, though from the face of it, it may also appear as though the applicant is seeking time extension as provided for in Rule 4 of the *Court of Appeal rules*. A quick reading of the applicant's supporting affidavit, clarifies the intention of the application as the applicant appropriately articulates the prayer he seeks as;
 - a) THAT this Honorable court stays the execution of the certificate of costs dated 10th September 2021 until the application praying for the (sic) extension dated 22nd day of June 2021 is heard and determined.
3. As such, this application has been improperly placed before me as I have no jurisdiction, as a single judge, to hear a Rule 5 (2) (b) application. The same can only be canvassed before a full bench.



4. I therefore direct that this application be properly listed before the full Bench.

DATED AND DELIVERED AT NAIROBI THIS 22ND DAY OF JULY, 2022.

P. O. KIAGE

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JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR

