



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**CORAM: KOOME, JA (IN CHAMBERS)**

**CIVIL APPLICATION NO. 143 OF 2020**

**BETWEEN**

**WAMBUI KIMITHI.....1<sup>ST</sup> APPELLANT**

**NJENGA MWAURA.....2<sup>ND</sup> APPELLANT**

**JANE WANJIKU NDEGWA.....3<sup>RD</sup> APPELLANT**

**AND**

**MARY WANGUI MUHINDI.....RESPONDENT**

*(Being an application for extension of time within which to file and serve a Notice and Record of*

*Appeal out of time from the judgment and decree of the Environment and Land Court*

*at Nairobi (E. O. Obaga, J.) dated 13<sup>th</sup> February, 2020*

**in**

**NRB. ELC NO 431 OF 2020)**

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**RULING**

1. This motion on notice dated 29<sup>th</sup> May, 2020 is taken out by the applicants. The heading of the motion reads and indicates that it is an application for extension of time within which to file and serve a Notice and Record of Appeal out of time against the Judgment and Decree of the **Environment and Land Court Cause No. 431 of 2012** at Nairobi by **(E. O Obaga, J.)** dated 13<sup>th</sup> February, 2020. It is predicated under the provisions of **Section 3(1)** of the **Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya, Rules 4, 5(2)(b), 6(2)(b) of the Court of Appeal Rules, 2010.**

2. However, as one proceeds to look at the prayers sought in the body of the motion and all subsequent documentation in support thereof, the applicants are seeking the following orders: -

*“1. That this Honourable Court be pleased to grant a stay of execution of the judgment delivered on the 13<sup>th</sup> February, 2020 by Learned Judge Honourable Justice E. O Obaga and the Decree of court issued thereafter in ELC 143 of 2012 Mary Wangui Muhindo vs. Wambui Kamithi & 2 Others at Nairobi pending hearing and determination of the intended appeal.*

*2. That this Honourable Court be pleased to grant a stay of any further proceedings pursuant of the judgment delivered on the 13<sup>th</sup> February, 2020 by Learned Judge Honourable Justice E.O. Obaga and the Decree of court issued thereafter in ELC 143 of 2012 Mary Wangui Muhindo vs. Wambui Kamithi & 2 Others at Nairobi pending hearing and determination of the intended appeal and or such terms as the court may dem just.*

*3. That pending hearing and determination of this appeal, this Honourable Court pleased to restrain the Respondent from unnecessarily*

***interfering with the Applicant's exclusive possession, use and occupation of the said suit property LR NO. DAGORETTI/RUTHIMITU/T.243.***

3. This motion was placed before me as a single Judge for consideration of a prayer seeking extension of time within which the applicants could file the Notice and Record of Appeal out of time. The respondent opposed the motion stating that the applicants have never served her with a notice of appeal or even a letter bespeaking the proceedings.

4. The problem with the instant motion however is as demonstrated above, it has no prayer seeking to extend time. A party is bound by their own pleadings which is a settled practice, a court cannot grant orders that are not sought by the party. In **David Sironga Ole Tukai vs. Francis Arap Muge & 2 others [2014] eKLR** this Court while dealing with a similar issue had this to say about a party's pleading; -

**“It is well established in our jurisdiction that the court will not grant a remedy, which has not been applied for, and that it will not determine issues, which the parties have not pleaded. In an adversarial system such as ours, parties to litigation are the ones who set the agenda, and subject to rules of pleadings, each party is left to formulate its own case in its own way. And it is for the purpose of certainty and finality that each party is bound by its own pleadings.”**

5. A court is not in the business of filing the gaps negligently left by a party in their pleadings especially in this case where the applicants were represented by counsel who drew the motion. This is further compounded by the fact that there is no mention of this prayer in the applicants' supporting affidavit. In the event there being no prayer for extension of time, this application does not lie and it is hereby struck off with costs to the respondent.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of April, 2021.**

**M. K. KOOME**

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**JUDGE OF APPEAL**

*I certify that this is a true copy of the original.*

*Signed*

**DEPUTY REGISTRAR**