



REPUBLIC OF KENYA



KENYA LAW
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**Kageni v Wamagata & another (Civil Appeal E206 of 2020)
[2021] KECA 138 (KLR) (11 November 2021) (Ruling)**

Neutral citation: [2021] KECA 138 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPEAL E206 OF 2020
J MOHAMMED, RN NAMBUYE & HM OKWENGU, JJA
NOVEMBER 11, 2021**

BETWEEN

DAVID MIGICHI KAGENI APPLICANT

AND

JAMES GITINGI WAMAGATA 1ST RESPONDENT

JOSPHAT MAINA MACHARIA 2ND RESPONDENT

(Application for stay of execution of the judgment/Ruling of the Environment and Land Court at Nairobi (Hon. Justice K. Bor) delivered on 15th October, 2018 in ELC Case No. 459 of 2010)

RULING

1. What is before us is a notice of motion dated 22nd July, 2020 which is indicated as being an application for stay of execution of the judgment and ruling delivered on 15th October 2018 by the ELC (K. Bor. J) However, the motion is said to be brought under section 5 of the *Appellate Jurisdiction Act*, Cap 9 and Rule 4 of the Court of Appeal Rules, and Article 159 of the Constitution. The orders sought are first, leave to appeal out of time against the whole judgment of the honorable Justice K. Bor, delivered on 15th October 2018 and secondly, that the notice of appeal and record of appeal annexed thereto be deemed as duly filed and served.
2. Upon being served with the hearing notice lodged by the applicant, the respondents sent an email to the Deputy Registrar of the Court, indicating that the applicant's motion for stay of execution was dealt with in civil application No. 402 of 2019 and determined on 19th June, 2020 and that they have not been served with any other application.
3. We note that in his motion, the applicant has annexed a copy of the ruling delivered by this Court on 19th June 2020. In that ruling, the Court granted the applicant's motion for stay of execution of the ELC judgment and decree, pending the hearing and determination of his intended appeal. We have confirmed from the Court registry that no appeal has been filed by the applicant to date.



4. It is evident that the motion before us, though wrongly entitled as one for stay of execution, is for extension of time under Rule 4 of the Court Rules, and therefore ought to be heard by a single Judge. We therefore direct that the applicant serves the motion on the respondent, and that the motion be listed for hearing before a single Judge other than Okwengu, JA. who appears to have dealt with the matter in the High Court

Dated and delivered at Nairobi this 11th day of November, 2021.

R. N. NAMBUYE

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JUDGE OF APPEAL

HANNAH OKWENGU

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JUDGE OF APPEAL

J. MOHAMMED

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original

DEPUTY REGISTRAR

