



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: NAMBUYE, KIAGE & MURGOR J.J.A.)

NYERI CIVIL APPLICATION NO. 148 OF 2019

BETWEEN

MARTHA THAIRORA GIKUNDIAPPLICANT

AND

ELIZABETH KANANU1ST RESPONDENT

HELLEN NTHIORI M'ITIRI2ND RESPONDENT

(Being an application for stay of execution of the decree of the Environment and Land Court (Hon. J. G. Kemei, J.) dated 8th April 2019

in

Meru ELC No. 307 of 2013

RULING OF THE COURT

1. **UPON** perusing the Notice of Motion dated 31st August 2019, brought under sections 3, 3A, 3B of the Appellate Jurisdiction Act, Cap 9 of the Laws of Kenya (L.O.K) and Rule 5(2)(b) of the Court of Appeal Rules (2010) substantively seeking an order that there be a stay of execution against the judgment/decree of the superior court dated 8th April 2019 and all consequential orders pending the hearing and determination of the intended appeal; and an order that costs of the application do abide the outcome of the intended appeal; and
2. **UPON** reading the grounds on the body of the application and the supporting affidavit of **Martha Thairora Gikundi** together with annexures thereto; and
3. **UPON** reading the replying affidavit of **Hellen Nthiori M'itiri** sworn on 3rd October 2019 in opposition to the application; and
4. **UPON** appraising the applicant's undated submissions filed in court on 18th September 2020 in support of the application; and
5. **HAVING** considered the totality of the above on 5th October 2020, when the application came before us for hearing, granted status quo prevailing on the ground as at 8th April 2019 and directed that the stay granted be maintained until the delivery of the ruling on 20th November 2020; and
6. **HAVING** considered the intended Memorandum of Appeal annexed to the supporting affidavit in light of the principles that guide this Court in determining applications under **Rule 5(2)(b)** of this Court's rules which is the substantive provision for accessing the relief sought as summarized in **Stanley Kang'ethe vs. Tony Ketter & Others [2013]eKLR** and which we fully adopt; we are satisfied that the applicant has satisfied the first of the twin principles that guide the Court in the exercise of its mandate under the said rule, namely, demonstration of existence of an arguable appeal irrespective of its ultimate success and/or otherwise; and
7. **HAVING** applied the same test with regard to the need to satisfy the second prerequisite, namely demonstration that failure to grant the order sought will render the appeal filed nugatory, we are satisfied that if the threatened eviction of the applicant from the suit property is executed, it may be irreversible. In the alternative, even if it may be reversible, such reversibility may definitely involve costs for restoration of the *status quo ante* the date of delivery of the intended impugned judgment on 8th April 2019 which in our view would cause great inconvenience and would also be highly prejudicial to rival parties herein; and

8. **HAVING** reached the above conclusion, we make orders as follows:

(i) **Prayer 1 of the Notice of Motion dated 31st August 2019 is allowed.**

(ii) **Costs of the application to abide the outcome of the intended appeal.**

Dated and Delivered at Nairobi this 4th day of December, 2020.

R. N. NAMBUYE

.....

JUDGE OF APPEAL

P. O. KIAGE

.....

JUDGE OF APPEAL

A. K. MURGOR

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR