



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC NO 26 OF 2013

JOHN MURIUNGI MUGWIK.....PLAINTIFF

VERSUS

CHARITY MPINDA M'MUGWIK.....DEFENDANT/RESPONDENT

RULING

1. In the application dated 26.2.2018, applicant/ defendant is essentially praying for a stay of execution of the court's judgment given on 23.1.2014. She is also praying for extension of time to file and serve the notice of appeal.
2. She also desires that plaintiff be restrained from communicating the proceedings of the court to third parties.
3. The grounds in support of the application are that the judgment was read in defendant's absence and she relied on a neighbor to know what the outcome was. She avers that the intended appeal is meritorious.
4. The application is opposed by the plaintiff/ respondent. Plaintiff avers that defendant and her advocate were present when judgment was delivered. Plaintiff urges the court to see that the application is an afterthought.
5. I find that judgment was delivered in presence of counsels for both litigants and therefore, the allegation that defendant was not aware of the date of judgment has no basis.
6. Order 42 rule 6 (2) of the Civil Procedure Rules provides that; **“No order for stay of execution shall be made under sub-rule unless – The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”**.
7. In the case of **Halai & another versus Thornturn & Turpin (1963) LTD (1990) KLR 365**, the court of appeal held that **“The High Court's discretion to order a stay of execution of its order on decree is fettered by three conditions. Firstly, the applicant must establish a sufficient case, secondly, the court must be satisfied that substantial loss would ensue from a refusal to grant a stay and thirdly, the applicant must furnish security. The application must of course be made without unreasonable delay”**.
8. Applicant avers that she stands to be evicted from the suit land. This would certainly amount to what can be termed as substantial loss. However, applicant has not offered any security. In the circumstances, the court will not grant a stay indefinitely.

9. On issue of delay, I find that judgment, was delivered on 23.1.2018 and the application was filed on 28.2.2018. The delay is not unreasonable.

10. In the light of the foregoing findings, I will partially allow the application in the following terms;

(i) Applicant is hereby granted an extension of time to issue and serve the notice of appeal within 7 days from date of delivery of this ruling failure to which orders granted herein shall lapse.

(ii) A temporary stay of execution and enforcement of the judgment dated 23.1.2018 and resultant decree is hereby issued for a period of 40 days to enable the applicant pursue her case in the appellate forum.

(iii) Applicant is condemned to pay costs of this application.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 11th APRIL, 2018

IN THE PRESENCE OF:-

Court Assistant: Janet/Galgalo

Miss Munga for Defendant/Applicant - present

Kithinji for Plaintiff/Respondent - present

HON. LUCY. N. MBUGUA

ELC JUDGE



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