



Case Number:	Environment and Land Case 26 of 2013
Date Delivered:	20 May 2020
Case Class:	Civil
Court:	Environment and Land Court at Meru
Case Action:	Ruling
Judge:	Lucy Ngima Mbugua
Citation:	John Muriungi Mugwika v Charity Mpinda M'Mugwika [2020] eKLR
Advocates:	-
Case Summary:	-
Court Division:	Environment and Land
History Magistrates:	-
County:	Meru
Docket Number:	-
History Docket Number:	-
Case Outcome:	Application allowed
History County:	-
Representation By Advocates:	-
Advocates For:	-
Advocates Against:	-
Sum Awarded:	-
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**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MERU**

**ELC CASE NO. 26 OF 2013**

**JOHN MURIUNGI MUGWIKI .....PLAINTIFF**

**VERSUS**

**CHARITY MPINDA M'MUGWIKI .....DEFENDANT/RESPONDENT**

**RULING**

1. The plaintiff has filed the application dated 19.9.2019 (filed on 23.9.2019) seeking orders that the O.C.P.D Meru be authorized to give security to Ms CLEAR REAL AUCTIONEERS to proceed to evict the defendant from land parcel No. Abothuguchi/Ruiga/336. The grounds in support of the application are set out in the body of the application and in the affidavit of the applicant.

2. The applicant contends that when judgment was delivered on 23.1.2018, defendant was given a stay of 30 days. Thereafter, defendant filed an application for extension of the stay orders where she was granted 40 more days and she was to serve the notice of appeal within 7 days. Applicant contends that no appeal was ever pursued. The applicant hence desires to hire the auctioneers to levy eviction process hence the need for the security.

3. Defendant has opposed the application vide her replying affidavit filed on 28.10.2019. She contends that the judgment of this court delivered on 23.1.2018 has a nexus with a succession cause no.225 of 2011 where she has made an application for review of a judgment given in the succession cause. The respondent avers that the outcome of her application for review in the succession cause will substantively change the cause of the proceedings in this matter and the said judgment of 23.1.2018 plus decree will be subjected to a review accordingly. The respondent further claims that the plan to evict her from her inheritance is cruel and inhumane and that the orders sought for are not merited.

4. The parties did not file submissions as directed by the court hence no arguments have been proffered for or in opposition to the application.

5. The court can only determine the application on the basis of the issues raised in the application and the affidavits of the parties.

6. I have considered that judgment herein was delivered on 23.1.2018. Thereafter, the applicant filed an application for extension of time to file and serve a notice of appeal and for a temporary stay of execution. Vide the ruling delivered on 11.4.2018, the defendant was given a conditional stay of which she appears not to have complied with. There is no notice of appeal. Thus the orders granted to the defendant on 11.4.2018 have lapsed. There is no further order of stay of execution in so far as the judgment of this court is concerned.

7. The application made by the applicant is meant to give effect to the implementation of this judgment. This court has already pronounced itself in so far as the claims of the litigants are concerned and hence the court is functus officio in so far as those claims are concerned. The court is only left with the issue of execution of the judgment.

8. In the circumstances I find that the application dated 19.9.2019 is merited and the same is allowed with costs to the applicant. I do however grant a stay of the orders herein for a period of 45 DAYS due to the prevailing health circumstances concerning covid 19 pandemic.

**DATED, SIGNED AND DELIVERED AT MERU THIS 20<sup>TH</sup> DAY OF MAY, 2020**

**HON. LUCY. N. MBUGUA**


**ELC JUDGE**

**ORDER**

The date of delivery of this ruling was given to the parties at the conclusion of the hearing and by a fresh notice by the Deputy Registrar. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17<sup>th</sup> March, 2020 and published in the Kenya Gazette of 17<sup>th</sup> April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

**HON. LUCY N. MBUGUA**

**ELC JUDGE**

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