



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT CHUKA

CHUKA ELC CASE NO 84 OF 2017

FORMERLY MERU PETITON CASE NO.20 OF 2013

VICTOR MBAE MUGAMBI.....PETITIONER

VERSUS

THE DISTRICT LAND ADJUDICATION & SETTLEMENT OFFICER

MARIANI ADJUDICATION SECTION.....1ST RESPONDENT

ATTORNEY GENERAL.....2ND RESPONDENT

M'NTHAKA MUGWIKI.....INTERESTED PARTY

RULING

1. This application is dated **2nd February, 2018**. It seeks the following orders:

1. That the application be certified urgent and be heard in the first instance.

2. That this honourable court be pleased to issue orders for stay of execution pending hearing and determination of the appeal.

2. That the cost of this application be provided for.

2. It is supported by the affidavit of the applicant and has the following grounds:

a. That the applicant/respondent was dissatisfied with the decision and judgment of this court as he was never heard.

b. The applicant has lodged a notice of appeal and his intended appeal has good grounds and chances of success as the petition was misplaced on the first instant.

c. The applicant stands to suffer irreparably loss and damage because the applicant has been ordered to vacate the suit land.

d. The proceedings of the Land Adjudication Officer which are the basis of this matter does not support the claim by the petitioner at all.

3. The application is supported by the supporting affidavit of **M'NTHAKA MUGWIKI** sworn on **22nd**

February, 2018 which states:

I, **M'NTHAKA MUGWIK** of **P. O. BOX 645 CHUKA**, do hereby make oath and state as follows:

1. That I am an Interested party herein thus conversant with the matter and competent to swear this affidavit.
2. That on the **21st November, 2017** judgment in the above mentioned matter was read.
3. That being dissatisfied by the decision of the honourable court I filed a notice of appeal, attached herein and marked MMI is a copy of appeal.
4. That there is need of stay of execution pending hearing and determination of the intended appeal.
5. That the orders sought if not granted will render the appeal nugatory.
6. That I stand to suffer irreparable loss and damage because I have been ordered to vacate the suit land.
7. That the appeal has good ground and high chances of success as the petition was misplaced on the 1st instant.
8. That the petitioner will not suffer prejudice if the application is allowed.
9. That the Interested party/applicant will suffer great loss if the petitioner goes ahead to be executed.
10. That what is deponed herein above is true to the best of my knowledge, belief and understanding.

4. The application was filed on **22nd February, 2018** vide a certificate of urgency and as at today, **13th March, 2018** the application remains unprosecuted. It is also noted that the applicant has not intimated the amount of deposit for security he is willing to be kept in the court's custody.

5. In the circumstances, this application is dismissed for non-prosecution. It is opined that the applicant can seek stay of execution in the superior court.

6. No costs are awarded.

7. It is so ordered.

Delivered in open court at Chuka this 13th day of March, 2018 in the presence of:

CA: Ndegwa

Parties not in court.

P. M. NJOROGE,

JUDGE.