



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

FAMILY DIVISION

SUCCESSION CAUSE NO. 202 OF 1990

IN THE MATTER OF THE ESTATE OF CHEGE KIRUMBA(DECEASED)

DANIEL KAHARA WAKIGO.....APPLICANT

VERSUS

JOHN KIUMBUKU CHEGE.....1ST RESPONDENT

JAMES GITAU CHEGE.....2ND RESPONDENT

SIMON MACHIEYA CHEGE.....3RD RESPONDENT

HARRISON MUCHENE CHEGE...4TH RESPONDENT

RULING

1. The application dated 25th June 2018 by the applicant Daniel Kahara Wakigo seeks the court to grant an order of stay of execution of the orders given on 14th June 2018 cancelling and revoking land parcels title numbers Dagoretti/Waithaka/724, 725, 726 and 727 registered in his name pending the hearing and determination of the appeal filed on 20th June 2018 against the order. The applicant states that he will suffer substantial and/or irreparable loss should stay not be granted. He stated that the issue of security does not arise because the respondents John Kiumbuku Chege, James Gitau Chege, Simon Machieya Chege and Harrison Muchene Chege are in occupation of the parcels. It was alleged that the court had given conflicting decisions in the matter; it had issued orders nullifying the titles when it was not sitting as an appeal court over **CMCC No. 1795 of 1995**, and when it was not an Environment and Land Court under **Article 162(2)** of the Constitution of Kenya 2010; and that it had reviewed its own orders made on 25th November 2016 without jurisdiction.

2. The application was opposed through the affidavit of James Gitau Chege (the 2nd respondent). He is a co-administrator of the estate of Chege Kirumba who died on 28th July 1983. The other administrators are the other respondents. The deceased left Dagoretti/Waithaka/47. In 1984 the Public Trustee petitioned the court for the grant of letters of administration intestate. The grant was issued and confirmed on 15th March 1991. On 27th August 1987 the applicant's wife entered into agreement with the widow of the deceased to buy one acre from the property. On 8th February 1993 the applicant and the Public Trustee subdivided the land into parcels 724, 725, 726, 727 and 728. The applicant filed **CMCC No. 1795 of 1995** at Nairobi seeking the widow and the Public Trustee to transfer the one acre to him. Subsequent to that the Public Trustee transferred 724, 725, 726 and 724 to the applicant. On 30th April 2014 the applicant filed application in this court to evict the respondents. Judge Musyoka delivered a ruling on 25th November 2016 asking that the application be made in **CMCC 1795 of 1995**. On 4th May 2017 an application was made by the respondents for the review of the ruling. The court called for the lower court proceedings and made a ruling on 14th Jun 2018 stating that it had been misled by the applicant into dismissing the respondents' application. It found that the judgment in the lower court that had led to the applicant getting the four parcels of land subject of the estate had in fact been set aside in the same court. Therefore, the applicant had no basis to claim the parcels. The parcels had, in the meantime, been transferred to the applicant. That was why Justice Musyoka, now being seized of these facts, revoked and annulled the titles to the four parcels that were in the name of the applicant.

3. The applicant did not file any further affidavit to counter the averments of the 2nd respondent.

4. It is notable from the record that on 4th November 2013 the Public Trustee agreed to relinquish his role in the administration of the estate of the deceased. The administration was taken over by the respondents.

5. It is not for this court to speculate on what chances the applicant shall have on appeal. I note in his favour that he brought the application without delay.

6. Stay of execution is meant to preserve the *status quo* as the applicant prosecutes the appeal. It is material that the court makes sure the appeal, if successful, is not rendered nugatory. At the same time, a party who has a judgment is entitled to execute it (**Stephen Wanjohi –v- Central Glass Industries Ltd, HCCC NO. 6726 of 1991 at Nairobi**). If the titles in the name of the applicant were to revert to the respondents as directed by this court they may do whatever they like with the parcels, including selling or transferring them. The applicant would therefore be put to material prejudice.

7. I have considered the facts of the case. I will exercise my discretion to grant stay. But, the stay shall be for 90 days to enable the applicant seek stay in the Court of Appeal where he is appealing the decision of this court.

8. The applicant has been indulged. He will pay the costs of the application.

DATED and SIGNED at NAIROBI this 18TH day of DECEMBER 2018

A.O. MUCHELULE

JUDGE