



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 35 OF 2015

ELIPHAS MBAE ARITHI.....APPELLANT

VERSUS

ANGELA GATUMI MUCHEKE.....RESPONDENT

R U L I N G

This application is dated 27th July, 2015 and seeks orders:-

- 1. THAT this Honourable Court be pleased to certify this application as urgent and hear the same ex-parte in the first instance.***
- 2. THAT this Honourable Court be pleased to order stay of execution of the Judgment/decree of the Principal Magistrate Nkubu in Nkubu PMCC NO. 74 of 2013 pending the hearing of this application inter parties.***
- 3. THAT this Honourable Court be pleased to order stay of execution of the Judgment/Decree of the Principal Magistrate Nkubu PMCC NO. 74 OF 2013 pending the hearing and determination of this Appeal.***
- 4. That the cost of this application be provided for.***

The application is supported by the Affidavit of the applicant, ELIPHAS MBAE ARITHI and has the following grounds:-

- a. THAT the applicant was not satisfied with the Judgment of the Court.***
- b. THAT the applicant has been on the land for now close to 12 years and has extensively developed the same which is only 1 acre and should not be evicted.***
- (c) THAT the Court refused to consider the Appellant's case and binding authorities from the High Court and Court of Appeal.***
- d. THAT the applicant has a good Appeal and should be given chance to be heard by this Court before he is thrown out of what he has known as his home for over 10 years.***

On 29th, July, 2015, I ordered the applicant to deposit a sum of Kshs. 100,000/= in Court within 7 days of the date failing which the order of stay would lapse. The applicant obeyed the order and deposited with

Court a sum of Kshs. 100,000/=.

I have considered the pleadings and the Submissions proffered by the parties in support of their respective assertions . I find that the application has merit. It is ordered as follows:-

- 1. This Court stays the Execution of the Judgment/Decree of the Principal Magistrate, Nkubu, in PMCC No. 74 of 2013 pending the hearing and determination of this Appeal.***
- 2. The sum of Kshs. 100,000/= already deposited with the Court by the applicant, be retained as deposit for security until this appeal is heard and determined.***
- 3. To expedite the hearing of the appeal , I admit it to appeal and the appellant should file the record of appeal and serve it upon the respondent within 60 days of today.***
- 4. After the record of Appeal is filed and exchanged, the parties will obtain a mutually convenient date for directions from the Registry.***

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 19TH DAY OF MAY, 2016 IN THE PRESENCE OF:-

CC: Lilian/Daniel

Muthamia h/b Rimita for Applicant

P.M NJOROGE

JUDGE