



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO 14 OF 2014

FLORENCE NKIO PHILIPAPPELLANT

VERSUS

JACQUELINE KALOKI.....RESPONDENT

RULING

This application is dated 14/05/2014 and seeks orders:-

1. ***THAT the application be certified as urgent and the same be disposed off in the first instance.***
2. ***THAT the Honourable Court be pleased to issue an order staying the execution of the decree in MERU CMCC 336 OF 2013 dated the 7th May, 2014 pending the hearing and determination of this application.***
3. ***THAT the Honourable Court be pleased to issue an order for status quo prohibiting the Respondent from evicting the Appellant from the suit land pending the hearing and determination of this application.***
4. ***THAT the Honourable Court be pleased to issue an order staying the execution of the decree in MERU CMCC 336 of 2013 dated the 7th May, 2014 pending the hearing and determination of this appeal.***
5. ***THAT the Honourable Court be pleased to issue an order for status quo prohibiting the Respondent from evicting the Appellant from the suit land pending the hearing and determination of this appeal.***
6. ***THAT cost of this application be provided for.***

The application is supported by the Affidavit of FLORENCE NKIO PHILIP and has the following grounds: -

1. ***THAT the appellant being dissatisfied with the decision of the subordinate Court dated 7th May, 2014 has appealed to the Honourable Court.***
2. ***THAT the application has been made timeously.***
3. ***THAT the Appellant stands to suffer substantial loss unless an order of stay of execution is issued.***

4. ***THAT the Respondent is in the process of transferring the disputed piece of land to himself and same is the Appellants home and such act would render the Appellant homeless.***
5. ***THAT the appeal has high chances of success.***
6. ***THAT it is in interest of justice that this application be allowed.***

The application was canvassed by way of Written Submissions.

The applicant has submitted that to grant or not to grant a stay of execution is at the discretion of the Court but the discretion must be exercised Judicially, The Applicant says that if her application is not allowed she is likely to be evicted from the suitland which she claims to occupy.

The respondent says that in her Replying Affidavit she has enumerated the cases previously brought by the applicant over the same subject matter. These are Cr. Case No. 81 of 92, Cr. Case No 3389/1993, Committee Case No. 1/1993, Judicial Review case No 58/2009, Petition case No 2 /2011 and CMCC NO 336 /2013.

The respondent says that Petition 2/2011 is still pending in the High Court. She says that the applicant sought orders of Injunction in that case and her application was dismissed. The respondent says that her prayer for injunction coached as a Prohibitory Order to maintain Status Quo is res judicata Petition 2/2011. The Respondent also states that the applicant made a similar application in CMCC No. 336/2013 which was heard and dismissed.

The Respondent takes issue with the fact that the applicant has cited order 42 rule 6 of the Civil Procedure which deals with Interim Injunctions and not Prohibitory Orders and Stay of Execution. This is not a true reflection of the truth. Order 42 rule 6 deals with stays of execution. The respondent is misleading the Court.

Many of the issues raised by the parties can only be determined after the appeal is heard. I opine that Ideally an order for stay of execution should not introduce issues not handled by the challenged Judgment. Stay of Execution is enough to deal with all pertinent issues:-

Order 42 rule 2 Sub rule 2 states as follows:-

(2) No order for stay of execution shall be made under sub rule(1) unless:-

(a) 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

(b) 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.

I grant the following orders:-

1. ***There is no order regarding prayer 2 as It is spent.***
2. ***Prayer 5 is denied.***
3. ***An order for Stay of Execution of the decree in Meru CMCC 336 of 2013 dated 17th May, 2014 is granted pending the hearing and determination of the Appeal on condition that the applicant/appellant will deposit in Court a sum of Kshs. 400,000/= within 30 days of 16/05/2016 failing which this order will automatically lapse.***
4. ***Costs shall be I the cause.***

It is so ordered.

DELIVERED IN OPEN COURT AT MERU THIS 16TH DAY OF MAY, 2016 IN THE PRESENCE OF:-

CC: Lilian/Daniel

Ken Muriuki h/b Miss E.G Mwangi for Defendant

Muthamia h/b Miss Mutinda for the Applicant

P . M. NJOROGE

JUDGE