



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MACHAKOS

CIVIL SUIT NO. 68 OF 2016

JAMES MUTUKU MUSAUAPPLICANT

VERSUS

**MICHAEL KAMULA MBONDO (*SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF EUNICE MUMBUA MICHAEL – DECEASED*)RESPONDENT**

RULING OF THE COURT

1. The Notice of Motion application before the court is dated **18th October, 2016**. It seeks the following orders:

- a. That the matter be certified as urgent and be heard *ex parte* in the first instance.
- b. That this court be pleased to stay proceedings pending appeal from the decision of the Resident Magistrate in Kilungu Resident Magistrate’s Court Civil Case No. 90 of 2014 Michael Kamula Mbondo & another versus James Mutuku Musau & another made on 28th June, 2016.
- c. Costs do abide the application.

2. The application is premised on the grounds set out therein and is supported by affidavit of **James Mutuku Musau** sworn on **18th October, 2016**. The applicant’s case is that the applicant made an application for striking off his name from the suit. By a ruling dated 28th June, 2016 the trial court dismissed the applicant’s application. The applicant is aggrieved by the decision, and has lodged the appeal. The said appeal is alleged to be meritorious with high chances of success. The Lower Court matter is slated for hearing on **4th November, 2016**. (*now past*) and it is fair that proceedings be stayed.

3. The application is opposed by the respondent vide a replying affidavit sworn by **Andrew Makundi**, counsel for the respondent. The respondent’s case is that the application dated **18th October, 2016** is bad in law and is intended to delay justice. The issues raised in this application and the appeal filed by the applicant herein can be well canvassed and ventilated in PMCC. No. 90/2014 Kilungu. The respondent’s case is that the applicant herein can lead evidence during the hearing which is scheduled on **4th November, 2016** on the issues raised in this application and the appeal. If those orders are granted, the respondent will be occasioned great prejudice. The applicant will not be occasioned with any prejudice if the same is not allowed. **Mr. Makundi** submitted that the application is frivolous, vexatious and a gross abuse of the court process as it is raised to delay the determination of PMCC NO. 90 of 2014 and ought to be dismissed with costs as indeed it is not an expeditious use of both the court’s time and that of the parties and great injustice will result if stay orders are granted taking into account the workload of the High Court.

4. The application was heard *inter partes* on **3rd November, 2016** when the court declined to issue any interim orders and reserved the ruling for **22nd September, 2016**.

5. After carefully considering the application and submissions of the parties this court finds that there is no prejudice to be suffered by the applicant if the case proceeds in the lower court, since the applicant can still urge his views in the hearing of the main suit.

6. The application is dismissed with costs to the respondent.

DATED AND DELIVERED AT MACHAKOS THIS 22ND DAY OF NOVEMBER, 2016.

E. OGOLA

JUDGE

In the presence of:

Mr. Kanui holding brief for Tamata for applicant

M/S Ombega holding brief for Makundi for Respondent

Court Assistant – Mr. Munyao