



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU

HCA 11 OF 2014

GEDIEL MUGAMBI M'IMARIA.....1ST APPELLANT

STEPHEN MEEME M'IMARIA.....2ND APPELLANT

TIMOTHY KIMATHI M'IMARIA.....3RD APPELLANT

VERSUS

ROBERT M'IMPWI MUNGANIA.....RESPONDENT

R U L I N G

This application is dated 22.4.2014 and seeks orders:

- 1. THAT this application be certified as extremely urgent and the same be heard exparte in the 1st instance.**
- 2. THAT pending interpartes hearing of this application, an order be issued, staying the execution of the Exparte judgment and decree dated 4.11.2013 delivered in Maua CMCC NO.100 of 2007.**
- 3. THAT pending the hearing and determination of the Appeal, an order be issued, staying the execution of the Exparte judgment and decree dated 4.11.2013 delivered in MAUA CMCC No.100 of 2007.**
- 4. THAT costs of the application be provided for.**

It is supported by the Affidavit of Stephen Meme M'Imaria the 2nd appellant and on, inter alia, the following grounds:

- (a) THAT this application has been brought timeously.**
- (b) THAT the applicants stand to suffer substantial loss if they are evicted from the suit land, as that is where they were born and brought up.**
- (c) THAT the applicants have the suit land extensively and live with their families on the suit land.**

The application is opposed by the replying affidavit of Robert M'Impwi Mungania the respondent. In his replying affidavit he says that the appellants had filed an application seeking to stay execution of the lower courts judgment. I find that this application had been filed in the lower court. The affidavit

also contains many assertions which can only be ventilated at the hearing of the intended appeal if it is eventually admitted.

This application was slated for inter partes hearing on 16. 7.2014 when only the applicants advocate came to court even though the respondents advocate was in court when the hearing date was fixed.

I have considered the averments of the parties and the submissions of the applicant. Considering all things in the circumstances of this suit, I find it necessary in the interest of justice that I allow prayer 3 of the application subject to the following conditions:

1. **The applicant deposits in court a sum of Kshs.350,000/= as security within 14 days hereof.**
2. **Should order 1 above not be complied with within the stipulated period the order allowing stay of Execution of the judgment and decree in CMCC No.100 of 2007 will LAPSE with the consequence that the respondent will be at liberty to execute the apposite Judgment and Decree.**

It is so ordered.

Delivered in Open Court at Meru this 24th day of July, 2014 in the presence of:

Daniel/Lilian

Kaumbi h/b Mwirigi for Applicant

No representation for Respondent

P. M. NJOROGE

JUDGE