



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
MISC. CIVIL APPLICATION 13 OF 2014

STEPHEN MUTHAMIA & 2 OTHERS.....APPLICANTS

VERSUS

PATRICK KINYUA M'IRINGO.....RESPONDENT

R U L I N G

This application is dated 28.7.2014 and seeks orders that:

- 1. The application BE certified urgent and in view of its urgency, the same be admitted to hearing on priority basis and exparte at the first instance.**
- 2. Pending service, hearing and determination of the application interpartes or further order of the Honourable Court the Honourable Court be pleased to review and or vary its orders of 8th July, 2014 by:-**
 - (a) Reducing the amount of security to be deposited precedent to the formal operationalization and issuance of a stay of execution in Meru C.M.C.C. 358/1998 from Kshs. 400,000/= to Kshs. 50,000/= or such other lower and or affordable sum to the Honourable Court may be pleasing.**

OR

Extending the period within which the security is to be deposited by the applicants to 90 days up from 30 days with effect from 8.7.2014.

- (b) Extending the period within which the intended appeal and the record of appeal is to be lodged and served from 30 days to 40 days or such other longer period as to the Court may appear fair and reasonable.**

- 3. The Honourable Court in its discretion, be pleased to make any other and or further order for the purpose of attainment of the ends of justice.**
- 4. Costs of the application do abide in the intended appeal.**

The application is predicated upon the annexed affidavit of Stephen Muthamia Marete and on the grounds that:

- (i) The applicants are officials of a self help group which does not possess sufficient financial resources to raise a security of Kshs.400,000/ within a limited period of 30 days.**

(ii) In view of the age of the primary suit and the length of the proceedings therein coupled with the squeezed and limited resources and equipment at Meru Law Court it may not be possible to compile file and serve a record of appeal within 30 days as the proceedings of the Lower Court which will form a major part of the record of appeal will need to be typed and certified by the honourable Court.

(iii) If the orders sought are not granted, the Honourable Court's conditional order of stay and leave to lodge an appeal out of time shall go in vain.

(iv) The appellants/applicants will suffer substantial loss if the orders sought are not granted.

(v) The respondent stands to suffer absolutely no prejudice if the orders of review are made.

(vi) The application has been brought timeously, without undue delay and in good faith.

(vii) It is in the interest of justice that the order sought be granted.

When the application came up for interpartes hearing on 6.8.2014, the parties by consent agreed that the alternative in prayer 2 be granted.

In the circumstances, condition 1 in this courts ruling dated 8.7.2014 is varied to allow the applicant to deposit the apposite security within 90 days from 8.7.2014. The effect is this:

1. The applicant must deposit the sum of Kshs.400,000/= in court within 90 days with effect from 8.7.2014 as security before an order of Stay of Execution of the Judgment in CMCC No.358 of 1998 can be formally operative and issued.

2. Leave to Appeal granted on 8.7.2014 or the consequential appeal will not operate as a stay of execution unless order 1 above is complied with but is extended to 60 days from 8.7.2014.

Delivered in Open Court at Meru this 6th day of August, 2014 in the presence of:

Cc. Daniel/Lilian

Wamache h/b for Applicant

Miss Kiome for Respondent

P. M. NJOROGE

JUDGE