



REPUBLIC OF KENYA



**Githuka v Adan & another (Environment and Land Appeal
E014 of 2021) [2022] KEELC 16 (KLR) (25 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 16 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E014 OF 2021**

MN GICHERU, J

APRIL 25, 2022

BETWEEN

RAPHAEL KARIUKI GITHUKA APPLICANT

AND

SHADIA AHMED ADAN 1ST RESPONDENT

ALI AHMED 2ND RESPONDENT

RULING

1. This ruling is on the Notice of Motion dated 9th February, 2022 by the Appellant seeking a stay of implementation of the decree dated 7/4/2021 and orders of 21/7/2021 issued by Hon. J.N. Nthuku, Principal Magistrate Loitoktok in Case No. MCLE No. 07 of 2019 (O.S) pending the hearing and determination of this Appeal.
2. Secondly, the motion seeks to restrict any dealings with the suit land pending the hearing of the Appeal.
3. The motion which is brought under Section 79 G, 3A of the *Civil Procedure Rules* 2010 and all enabling provisions of law is supported by ten(10) grounds and two affidavits sworn by Raphael Kariuki Githuka dated 9/2/2022 and 10th March.
4. In summary, the Applicant says that he has lived on the suit land for over 30 years together with his wife and children. He has attached photographs of his homestead to the second affidavit. He say that if the application is not allowed, he will be evicted from the suit land and this Appeal will be rendered nugatory.
5. The application is opposed by the Respondents and the first Respondent Shadia Ahmed Adan has sworn a replying affidavit in which she says that the Appellant is not in possession of the suit land.
6. I have carefully considered the application in its entirety and I find that it has merit and I therefore allow it for two reasons.



7. Firstly, I find that the Appellant will suffer substantial loss if he is evicted from the suit land when the Appeal is pending. The status quo should be maintained pending the outcome of the Appeal.
8. Secondly, the Respondents have nothing to lose because should the Appeal be dismissed, they will have the land which will remain intact as the appeal pends.
9. For the above stated reasons, I allow the Notice of Motion dated 9/2/2022 in terms of prayers 3 and 5. Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 25TH DAY OF APRIL, 2022

M.N. GICHERU

JUDGE

