

REPUBLIC OF KENYA

High Court at Kakamega

Civil Case 47 of 2003

JOHN SEMBER NAMATSI PLAINTIFF/RESPONDENT

V E R S U S

JUMA WAWIRE WASIKE DEFENDANT/APPLICANT

R U L I N G

The application dated 13.9.2012 is seeking orders that there be a stay of execution of the judgment of the court, that an order of injunction be issued to restrain the plaintiff and the OCS Navakholo police station from interfering with the applicant's peaceful occupation of plot number **BUNYALA/BUDONGA/315**. The application is supported by the applicant's affidavit sworn on the same date. The plaintiff/respondent filed a notice of preliminary objection as well as a replying affidavit sworn by the plaintiff on the 17.9.2012. Parties agreed to file written submission and rely on the documents on record.

The applicant's contention is that this court delivered its judgment on 6.3.2012. He instructed the firm of Momanyi Manyoni & Company Advocates who were handling the matter for him to lodge an appeal. The said advocates delayed in obtaining typed proceedings and he changed advocates. His advocates have advised him that his intended appeal has high chances of success. On the 11.9.2012 26 armed people and fourteen armed policemen invaded his homestead and demolished his eight residential houses. His five cows were killed and property worth KShs.3 million was damaged. He was not served with the eviction order. He would like the eviction to be stayed so that he can pursue his appeal. The applicant/defendant further maintains that there is a case still pending before this court being civil suit no. 305 of 1999 (O.S.)

The plaintiff's preliminary objection is that the application is misconceived and incompetent. In the replying affidavit the plaintiff avers that he is not a party to Civil Suit No. 305 of 1999. He obtained an eviction order and the applicant asked for more time to move out voluntarily. When it appeared that the defendant was simply buying time he decided to effect the court order. He is the registered owner of plot number **BUNYALA/BUDONGA/1094**. There was no single head of cattle and nothing was looted. There were six grass thatched houses that were demolished and the applicant was evicted.

The application dated 13.9.2012 is not seeking orders of stay of execution pending appeal. The court delivered its judgment on the 6.3.2012. According to the respondent an eviction order was duly served on the applicant on the 26.4.2012. The nature of this dispute is that the respondent is the registered owner of the suit property as explained in the judgment of this court having bought it for KShs.420,000/=. The pending civil suit number 305 of 1999 does not involve the plaintiff herein and is a claim for adverse possession by the applicant. The proceedings herein show that **MWATUMA WAWIRE NYONGESA** who was the registered owner of the original plot number **BUNYALA/BUDONGA/315** divided the land into two plots namely – 1094 and 1095. I do find that the applicant has had ample time to pursue his appeal. There is no notice of appeal to the Court of Appeal annexed in support of the application. In short the applicant would like to reverse the judgment of the court without any good reasons. Granting the application would mean vacating the judgment. There is no time limit requested for the stay. There is no any sign that an appeal is being pursued. The payment for the proceedings was done on the 25.6.2012 a period of three months from the date of delivery of the judgment.

I do find that the application dated 13.9.2012 lacks merit and the same is dismissed with costs.

Delivered, dated and signed at Kakamega this 7th day of February, 2013

SAID J. CHITEMBWE
J U D G E