



REPUBLIC OF KENYA.

IN THE HIGH COURT OF KENYA AT BUSIA.

JUDICIAL REVIEW APPLICATION NO. 11 OF 2012

REPUBLICAPPLICANT.

VERSUS

1. CHAIRMAN CHAKOL LAND DISPUTES

TRIBUNAL1ST RESPONDENT

2. THE HON. ATTORNEY GENERAL 2ND RESPONDENT

3. DAVID MASIKA MAFUMBO.....INTERESTED PARTY

AND

LONGINUS ORONI MURUNGA.....EX-PARTE APPLICANT.

R U L I N G

The Applicant, **LONGINUS ORONI MURUNGA**, through M/S. A.G. A.Etiang , filed the notice of motion dated 26th April, 2013 for stay of execution of the ruling of this court delivered on 23rd April, 2013 and all consequential orders arising therefrom, pending the hearing and determination of an intended appeal to the Court of Appeal. The application is based on the six grounds on the face of the application and supported by the affidavit of the applicant, sworn on 26th April, 2013.

The application is opposed by the interested party, David MasikaMufumbo, who through M/S A. W. Kituyi and company advocates filed a replying affidavit sworn on 28th May, 2013.During the hearing of this application, Mr. Etiang and M/S Makokha appeared for the applicant and respondent respectively, and made their submissions.

The court has carefully considered the contents of the supporting and replying affidavits plus the submission by both counsel and find as follows;

1. That the court order dated 23rd April, 2013 which the applicant intend to appeal against, had the effect of striking out his application dated 14th March, 2012 and filed in court on 28th March, 2012.
2. That the applicant is apprehensive that the respondent may now proceed to execute the decision of the Chakol Land Dispute Tribunal,that had awarded theinterested party five acres and authorized the Executive officer to sign the transfer documents.
3. That the fear of the applicant is not misplaced as there is nothing stopping the interested party continuing with the execution proceedings in the absence of stay orders. The applicant has

already filed notice of appeal and annexed a draft memorandum of appeal to the supporting affidavit. The applicant has also indicated his willingness to provide security if this application is granted.

4. That the interested party will not suffer any prejudice if the application is granted, so long as security for cost is provided by the applicant. It is important to note that the applicant filed this application only six days after the court of 23rd April, 2013 and cannot be accused of having delayed in filing the application.
5. That the applicant has offered to deposit the title document for land parcel South Teso/Chakol/357, which is the subject matter of this case. The court is of the view that a security separate from that of the subject matter of this suit would be more suitable. This is because the interested party has an interest over the land in question and it would not be appropriate to offer it as security in case the applicant was to lose the appeal.

That for reasons shown in the foregoing paragraphs, the court finds the application by the applicant has merit and is granted in terms of prayer 3, on condition the applicant deposits a security worth Kshs.500,000/= with the court within the next thirty days failure to which the stay order will lapse. The security to be deposited should not be the title document for South Teso/Chakol/357. The costs will abide the outcome of the appeal.

It is so ordered.

S. M. KIBUNJA,

JUDGE.

Delivered on 18th day of July, 2013.