

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 262 OF 2013

SOLOMON MWENDA M'TUERANDU.....APPELLANT

VS

CHARLES NDEGWA MUNGANIA..... RESPONDENT

RULING

This application is dated 24th June, 2013 and prays for Orders;

- 1. THAT the application be certified urgent and service be dispersed with.**
- 2. THAT this Honourable Court be pleased to grant leave to the firm of Otieno C and Co. Advocates to act on behalf of the appellant herein.**
- 3. THAT this Honourable Court do order a stay of execution of the judgment of the Ag Principal Magistrate's Court at Meru delivered on 7th June, 2013 pending the hearing and final determination of the Appellants Appeal.**

Prayer 1 is spent.

It was submitted for the applicant that he would suffer irreparable loss if he was evicted from plot NO. MERU MUNICIPALITY BLOCK 11/803. It was indicated that the applicant was willing to deposit reasonable security.

For the respondent, it was submitted that the applicant had not demonstrated that he would suffer substantial loss if stay of execution was not allowed. It was also argued that the offer to deposit security by the applicant was hollow as no amount had been indicated.

It was pointed to the court that the applicant claimed that he was a tenant of the Municipal Council while the records clearly showed that plot NO. MERU MUNICIPALITY/BLOCK 11/803 was registered as a leasehold in the name of the respondent for 99 years from 1/12/1995. It was argued that the respondent could not litigate on behalf of the council.

After examining the averments and the submissions of the parties, I find that the respondent has not satisfied the court that he will suffer substantial loss if stay is denied. Prayer 2, allowing the firm of Otieno C and Co to act on behalf of the applicant, will be allowed. It is therefore ordered;-

- 1. THAT the firm of Otieno C and Co. Advocates is granted leave to act on behalf of the appellant.**
- 2. That the application for stay of execution of the judgment of the Ag Principal Magistrate's Court at Meru delivered on 7th June, 2013 is not allowed.**
- 3. Costs will be in the cause.**

Delivered at Meru this 14th day of August, 2013, in the presence of;- Murango Mwenda present for respondent.

E Kimathi holding brief for Otieno for the applicant.

P. M. NJOROGE

JUDGE