



**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 158B/2005**

**JOSEPH W. MUNDIA.....PLAINTIFF**

**VERSUS**

**SOLOMON K. RUGUT.....1<sup>ST</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR NAKURU.....2<sup>ND</sup> DEFENDANT**

**RULING**

The application dated 21/3/2013 is brought pursuant to Order 42 Rules 1, 4 and 6, Order 22 Rule 22. This court delivered a judgment on 15/3/2013 in favour of the plaintiff/respondent, against the defendant/applicant. The applicant is dissatisfied with the said judgment and has filed a notice of appeal dated 21/3/2013 and seeks stay of execution of the said judgment pending the hearing and determination of the intended appeal. The applicant contends that if the orders are not granted, he risks being evicted from the suit premises whereas his appeal has good chances of success. The application is supported by the affidavit of the 1<sup>st</sup> respondent wherein he reiterates the grounds in the body of the application. The applicant further contends that he intends to prosecute the appeal with speed, has already applied for proceedings and is ready to furnish security as the court will direct.

Livingstone Wangondu Thiongo, holder of the power of attorney donated by the plaintiff swore an affidavit dated 19/4/2013 opposing the application. The other affidavit was sworn by Henry Maritim Langat a resident of Parcel No. Olenguruone/Amalo/148. Thiongo deponed that the application is without merit because he visited the suit land and the plaintiff merely uses the disputed land to graze cattle and harvests tea therefrom and that there are no structures on the said land and that since he lives on a different land, he will not be prejudiced if the order of stay is not granted.

Langat deponed that he is a neighbour of both the plaintiff and defendant and that the defendant/applicant is in possession of his parcel Olenguruone/Amalo/147 since the 1970s. He agreed with Livingstone that the plaintiff only grows crops and grazes livestock on the suit land. In addition Mr. Kurgat, counsel for the respondent urged that the applicant had not met the conditions requisite for grant of an order of stay. Counsel also urged that the applicant failed to obey the court's orders to pay costs to the plaintiff/respondent and the court cannot exercise its discretion in his favour.

For the court to exercise its discretion to grant an order of stay under **Order 42 Rule 6(2)** the applicant has to meet the following threshold:-

- 1. That the application is brought without delay;**
- 2. That the applicant will suffered substantial loss if the order is not granted;**
- 3. The applicant must be ready to furnish security;**

**4. For any other sufficient reason.**

The judgment herein was read on 15/3/2013 and this application was filed on 22/3/2013. The application was filed without any delay.

According to the respondent, the applicant only uses the land to graze his cattle and pick tea but resides on another piece of land and will not be prejudiced if an order of stay is declined. There is judgment in favour of the plaintiff. He has been locked out of his land for a long time and if the order of stay is granted it means that he continues to be locked out. In doing my best to balance the interest of both parties, I would not be inclined to grant an order of stay.

But most importantly, this court found that the applicant disobeyed a court's order by failing to pay the plaintiff's costs of 27/7/2010. As a result the applicant was excluded from the proceedings because of his failure to comply with that court's order. That contempt has not yet been purged and the applicant cannot expect this court to exercise its discretion in his favour when he has no respect for court's orders. Court orders must be obeyed to uphold the dignity of this court. On that ground alone, the order sought cannot be granted and this application stands dismissed with costs to the plaintiff/respondent.

**DATED and DELIVERED this 27<sup>th</sup> day of September, 2013.**

**R.P.V. WENDOH**

**JUDGE**

**PRESENT:**

Ms Omwenyo holding brief for Mr. Mongeri for the plaintiff/respondent

Ms Wanjiru holding brief for Mr. Kurgat for the defendant/applicant

Kennedy – Court Clerk