



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT KAKAMEGA**  
Civil Appeal 131 of 2010

**ROMANORS OTHIENO ABUTI ..... APPELLANT**  
**VERSUS**  
**BUTERE MUMIAS COUNTY COUNCIL ..... 1ST RESPONDENT**  
**KENEDY PETER ONYANGO..... 2nd RESPONDENT**

**RULING**

The application dated 17.2.11 seeks orders that the court be pleased to bar the Defendants/Respondents from allocating and/or developing, erecting structures and or dealing in any way with Plot No. 8 Munami Market pending the hearing and determination of the Applicant's Appeal filed herein.

Secondly, the applicant seeks orders of stay of execution of the Decree obtained herein and any other consequential orders pending the hearing and determination of the Applicant's Appeal herein.

The applicant has also prayed that the O.C.S. Mumias Police Station do ensure compliance.

The application is supported by the affidavit of the applicant sworn on 17.2.11. According to the said affidavit it is stated that the 1st respondent has allocated the suit plot to the 2nd respondent who has commenced construction works on the same. That the appellant's application for stay before the trial magistrate's court was denied. That if the construction works proceed the applicant will suffer irreparable loss and the appeal will be rendered nugatory. That the appeal has good chances of success as the trial magistrate arrived at an erroneous finding. The applicant averred that his application has been made without delay and he is willing to provide security for costs.

The application is opposed to as per the replying affidavit of KENNEDY PETER ONYANGO, the 2nd Respondent.

According to the 2nd Respondent, he was allocated the suit Plot by the 1st Respondent and he paid all the

levies and rates. That after the allotment the 2nd Respondent submitted building plans which were approved and he developed the plot by constructing commercial buildings which are complete and he has let them out to tenants.

The 2<sup>nd</sup> Respondent's contention is that the orders sought have therefore been overtaken by events.

The uncontroverted evidence in the affidavit of the 2<sup>nd</sup> Respondent is that he has constructed, to the completion the buildings and rented the same out to the tenants. The tenancy agreements have been exhibited (annexure "KPO 3b"). There was no supplementary affidavit filed by the applicant to rebut the said assertions.

Indeed the applicant in paragraph No. 4 of his affidavit concedes that the 1<sup>st</sup> Respondent has already allocated the plot to the 2<sup>nd</sup> Respondent who has commenced construction works.

In the premises therefore, I agree with the submissions of the 2<sup>nd</sup> Respondent's Counsel that there is nothing to be stayed.

Based on the materials placed before this court, that is the Memorandum of Appeal and the affidavit evidence, this court is not able to comment on the chances of the appeal at this stage.

All in all the application fails with costs in the cause.

*Delivered, dated and signed at Kakamega this 31<sup>st</sup> day of July, 2012*

**B. THURANIRA JADEN**  
**J U D G E**