



CIVIL PRACTICE AND PROCEDURE

· Stay pending appeal.

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL APPEAL CASE NO. 27 OF 2010

TURIBU MBERIA 1ST APPELLANT

MUTUMA MBERIA 2ND APPELLANT

**KAVIRIA M'BIRITHIA (*Legal representative of
M'Birithia M'Ithiringa*)**

..... 3RD APPELLANT

VERSUS

MARGARET KIINGE RESPONDENT

RULING

The appellant filed his appeal against the judgment in CMCC Meru No. 983 of 1998 delivered on 3rd March 2010. The appellant by Notice of Motion dated 14th June 2010 seeks stay of execution of that judgment pending appeal. The appellants deponed in their supporting affidavit that their appeal has high chances of success. That if stay of execution is not granted the respondent will evict them from their commercial property. That the chief magistrate court by its judgment ordered the transfer into the respondent's name parcel number *Athinga/Athanga/5456* (whole) and 0.02 of parcel number *Athinga/Athanga/5593*. The application for stay of execution was opposed by the respondent and prayed in her replying affidavit that this court would order the parties to continue using the land they have been using pending appeal. The respondent argued to grant the orders of *status quo* may lead to her and her son's eviction from the commercial property which is on the suit property. Having considered the application and having also considered the concession made by the respondent I grant the following orders:-

- 1. The court does hereby stay the transfers ordered in CMCC Meru 983 of 1998 of parcels number Athinga/Athanga/5466 and 5593.***
- 2. The orders of stay in number (1) above cannot operate to displace either the appellants or the respondents from the portions they occupy and used prior to the judgment of CMCC Meru 983 of 1998 delivered on 3rd March 2010. All parties are to continue occupying the portions they have occupied prior to that judgment.***

3. *The costs of the Notice of Motion dated 14th June 2010 shall be in cause.*

Dated, signed and delivered at Meru this 13th day of April 2011.

MARY KASANGO
JUDGE