



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NYERI
CIVIL CASE NO. 272 OF 1991

SAMUEL N. M. WANJAU.....APPLICANT

VERSUS

THE ATTORNEY GENERAL.....1ST RESPONDENT
LAND REGISTRAR-MURANGA.....2ND RESPONDENT
JAMES KIMANI MWANGI.....3RD RESPONDENT

RULING

This ruling is the outcome of the Motion dated 14th February 2011 in which Samuel N. M. Wanjau, the Applicant herein, prays for an order of stay of execution pending appeal. The Motion is supported by the affidavit of the Applicant. The 3rd Respondent, James Kimani Mwangi, filed a replying affidavit to oppose the Motion.

The Applicant has averred that the 3rd respondent has taken steps to execute the judgment delivered on 17th September 2009 yet he has already filed an appeal. It is the Appellant's submission that unless the order of stay is given, he would suffer substantial loss in that his appeal will be rendered useless.

The respondent on the other hand is of the view that the order should not be granted because the intended appeal has slim chances of success. The Applicant was also accused of filing the Motion after an inordinate delay.

I have considered the material placed before me and the brief oral submissions of learned counsels from both sides. The applicant herein had filed this suit against the Attorney General, the Land registrar, Murang'a and the 3rd Respondent herein. He sought for a declaratory judgment and an order for injunction. The suit was defended. It was heard and dismissed by this court on 17th September 2009. The 3rd Respondent's counter-claim was allowed in that the Land Registrar was directed to amend the R.I.M. to save the 3rd Respondent from losing 1.3 acres of land to the Appellant. There was evidence that the amendment of the R.I.M. would not change the actual acreage on the ground. In such applications, the Applicant must show the substantial loss he would suffer if he is not given the orders of stay. He claimed that he is likely to lose 1.5 acres to the 3rd Respondent. A careful look at the judgment will show that the Applicant will lose no land. In the end I see no merit in the Motion. It is dismissed with costs to the 3rd Respondent.

Dated and delivered at Nyeri this 29th day of July 2011.

J. K. SERGON
JUDGE

In open court in the presence of R.M. Kimani for the 3rd Respondent N/A for 2nd 7 3rd Respondent Miss Keli for Applicant.

J. K. SERGON
JUDGE