



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**

**AT NAKURU**

**CIVIL SUIT NO. 495 OF 1998**

**SAMUEL WANDERI.....PLAINTIFF**

**VERSUS**

**JAMES GICHURE KIONGO.....1<sup>ST</sup> DEFENDANT**  
**RIFT VALLEY ENTERPRISES LTD.....2<sup>ND</sup> DEFENDANT**

**RULING**

By a Judgment delivered on 25<sup>th</sup> day of March 2011, I granted orders: -

- (a) *declaring the Respondent the absolute owner of the parcel of land known as Dundori/Mugwethi/Block 2/47,*
- (b) *that the registration of the 1<sup>st</sup> Defendant as the proprietor be cancelled and replaced with that of the plaintiff, and*
- (c) *the Defendants be jointly and severally condemned with costs of the suit.*

Pursuant to the application under a Certificate of Urgency dated 11<sup>th</sup> April 2011 the Applicant (*Defendant*) sought a stay of that judgment. I granted the order, pending the hearing *inter partes* on 15<sup>th</sup> June 2011, Mr. Sanya counsel for the Plaintiff (*Respondent*) and Mrs Kereri counsel for the Applicant asked me to make a Ruling on the application for stay pending appeal.

The application is premised upon the provisions of Order 42, rule 6(1) and Order 50 rule 1 of the Civil Procedure Rules. Order 50 rule I is a procedural order that all application except where otherwise provided shall be brought by of a Notice of Motion. Order 42 rule 6(1) provides for the substantive conditions for grant of a stay of execution pending appeal. The said rule provides that no appeal or second appeal operates as a stay, and empowers the court which granted the orders appealed against or the court appealed to grant a stay. The conditions for grant of stay are however set out in rule 6(2) and are these -

- (1) *that substantial loss may result to the applicant unless the order of stay is made;*
- (2) *that the application has been made without unreasonable delay;*
- (3) *that such security as the court orders for the due performance of such decree or order as may ultimately be binding on the applicant has been given by him.*

Judgment herein was delivered on 25<sup>th</sup> March 2011. The application for stay, was made on 13<sup>th</sup> April 2011, that is after approximately 21 days. It could have been made earlier, but the delay cannot be considered unreasonable. The condition to file an application for stay within reasonable time was therefore fulfilled. The applicant has however not fulfilled the other two conditions. The applicant has not offered any security to ensure that he will not sell the suit land. He has the title which as shown in the evidence of the Plaintiff (*Respondent*) he obtained fraudulently. The Respondent has in his Replying Affidavit stated the Market Value of the land as about Ksh 1.0 million, and that the Applicant should provide that security.

As the Plaintiff is on the land, but has no title, the Applicant will not suffer any loss and has not demonstrated what loss he would suffer. The application fails on this ground too.

In conclusion, I see no substantive ground for granting a stay of the execution of the Judgment on 25<sup>th</sup> March 2011. The application dated 11<sup>th</sup> April, 2011 and filed on 13<sup>th</sup> April 2011 is therefore dismissed with costs to the Plaintiff (*Respondent*).

There shall be orders accordingly.

**Dated, delivered and signed at Nakuru this 12<sup>th</sup> day of October, 2011**

**M. J. ANYARA EMUKULE**  
**JUDGE**