



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**CIVIL APPEAL NO. 311 OF 2009**

**GRACE MUTHONI GICHUNGWA ..... APPELLANT/APPLICANT**

**SALOME WANJIKU MBIRWA ..... 2<sup>ND</sup> APPELLANT/APPLICAN**

**VERSUS**

**SAMWEL KIBUI MBIRWA ..... RESPONDENT/ RESPONDENT**

*(Being an appeal from the whole decision of 29<sup>th</sup> April 2009 of the Lands Appeals Tribunal in LND/16/20/43/2004 in regard o land parcel Dagoretti/Thogoro/315)*

**RULING**

**Application for Stay of Execution**

**Dated 28<sup>th</sup> September 2011**

**I. INTRODUCTION**

1. The original appeal arises from a Land Disputes Tribunal matter before the Provincial Tribunal. Being dissatisfied with the decision of the tribunal, an appeal was preferred to this High Court on the 23<sup>rd</sup> June 2009.
2. No action appears to have been taken on this appeal by the courts through the Deputy Registrar.
3. The respondent sold the land parcel LR Dagoretti/Thogoto/315 and titles issued in August 2011. The other parcel of land LR Dagoretti/Thogoto 76 remained intact.
4. The Pronvincial Disputes Appeals Tribunal had given the respondent the land parcel Dagoretti/Thogoto/315.
5. The new buyers were to be enjoined to the appeal by application of 18<sup>th</sup> October 2011. This was granted by consent of the parties.

6. By an application 28<sup>th</sup> September 2011, the applicant prayed for stay of execution.

## II APPLICATION 28<sup>TH</sup> SEPTEMBER 2011

7. The applicant/appellant was not aware that the land had been sold. She now prays that there be no further dealings on the land till the determination of the appeal.

8. In reply, the advocate for the interested party stated the application was more of an injunction in form. The ingredients of an injunction has not been established.

9. The respondent stated he sold the land and had no further interest in the matter.

## III FINDINGS

10. Where a matter is pending in court and the issue concerns land, no transfer of the said land should be permitted regardless that there exists orders of stay and or injunction or dealings of the land.

11. The respondent should have moved the file and or requested the deputy registrar to list the file for dismissal before the Hon. Judge. Once this would have been granted then would he have proceeded to have further dealings with the land. As such I find that the applicants have established that they have established their application.

12. If the same would not be granted, it would cause irreparable loss.

13. The application was brought without inordinate delay. The development on the land began in August 2011.

14. I hereby grant the orders as prayed in the application of 28<sup>th</sup> September 2011.

DATED THIS 16<sup>TH</sup> DAY OF DECEMBER 2011 AT NAIROBI

M.A. ANG'AWA

JUDGE

Advocates :

*i) R. Mutiso instructed by M/s R.M. Mutiso & Co Advocates for appellant/applicant*

*ii) L S Opundo instructed by Opundo & Co Advocates for respondent/ original plaintiff*

### **Editorial Summary**

1. *Civil Appeal*

2. *Civil Practice and Procedure*

3. *Subject of Main Subordinate Court Case*

**LAND**

- 3.1 i) *LR Dagoretti/Thogoto/76*
- ii) *LR Dagoretti/Thogoto/315*

3.2 *Land Disputes Tribunal Act*

3.3 *Decision of Provincial Lands Tribunal*

*Gives land to respondent*

*LR Dagoretti/Thogoto/315*

3.4 *Appellant files appeal on 23<sup>rd</sup> June 2009*

3.5 *Prayer for the award to be set aside.*

3.6 *No action taken by parties.*

3.7 *Respondent sells land*

*LR Dagoretti/Thogoto/315*

3.8 *Appellants file application dated*

*28<sup>th</sup> September 2011 for stay of execution.*

3.9 *The two new buyers apply to be enjoined*

*To the appeal suit – application granted on*

*1/11/2011 (Angawa J)*

3.10 *Should stay of execution be granted?*

4. *Application 28<sup>th</sup> September 2011*

a) *Pending the appeal respondent sells land to interested party.*

b) *Prays that, if stay is not granted than the appeal will be rendered nugatory.*

c) *Whereas transfer occurs, there should stay of any dealings of the property till finalization of the appeal.*

5. *In reply:*

5.1 *Application is of an injunction.*

5.2 *A prima facie must be established.*

5.3 *The matter before court would be on a matter of law.*

5.4 *The appellants do not reside on the property*

5.5 *In response respondent in person stated he sold the land.*

5.6 *The appellant prays for the right to be heard.*

6. *Held:*

*Application granted 28<sup>th</sup> September 2011*

*as prayed.*

7. *Case Law:*

8. *Advocates :*

i) *R. Mutiso instructed by M/s R.M. Mutiso & Co Advocates for appellant/applicant*

ii) *L S Opundo instructed by Opundo & Co Advocates for respondent/ original plaintiff*