



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

CIVIL CASE NO. 78 OF 2008

MARY MUTHONI NJERU.....PLAINTIFF
VERSUS
DUNCAN MUGO NDATA.....DEFENDANT

R U L I N G

The Judgment in this case was rendered on 9.6.2010 following a full trial. I dismissed the plaintiff's suit with costs to the defendant. Following that dismissal, the plaintiff filed the application dated 22.7.2010 in which he is seeking orders of stay pending execution. The Application is dated 22.7.2010 and is the subject of this ruling. The Application is premised on ten grounds on its face and on the supporting affidavit of the Applicant dated 22.7.2010.

According to the Applicant, she has filed an appeal against the said judgment and that the said Appeal has high chances of success.

According to the Respondent however, following the said judgment, he prepared the land in question and planted rice which is already growing on the plot. He has deponed that granting stay orders would cause him irreparable loss. He annexed receipts to show that he bought the rice seeds and cultivated the land after judgment was given in his favour. He has also deponed that the Appeal has no chances of success and urges the court to dismiss the instant Application with costs. I have considered the application, the grounds thereon and the rival affidavits. I have also taken into consideration the short submissions by both counsel herein. As a starting point, I am not satisfied that there is any competent Appeal filed before the court of Appeal. There is no cogent evidence before me to show that there is an appeal as claimed. I say so because other than the draft memorandum of Appeal, there is no evidence that the actual memorandum of Appeal has been lodged before the court of Appeal in Nyeri. The draft memo is of no assistance to the Applicant whatsoever.

Even if I were to assume that the Appeal has been filed, my considered view is that the same cannot be said to have overwhelming chances of success. By the time I rendered the judgment, I was satisfied that the plaintiff/Applicant had no claim at all on the Respondent's land. From the evidence adduced, she has other land elsewhere which belongs to her husband in his own right and the deponment that she will be rendered destitute if stay orders are not granted is less than truthful. In my view her appeal has no chances of success at all. If she feels otherwise, then the Applicant should have sought the orders of stay from the Court of Appeal.

There is also nothing to stay as the respondent has already taken over the plot and planted his rice crop.

All in all, my finding is that this Application lacks merit. The same is therefore dismissed with costs to the respondent.

W. KARANJA
JUDGE

Dated, delivered and signed at Embu this 25th day of October 2010

In the presence of:- Mr. Kathungu for Respondent. No appearance for Applicant or counsel.

