



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HCCA NO. 13 OF 2007

LESIT J.

SALIM JUMA MARIMBA & 6

OTHERS.....APPELLANT

VERSUS

PETER

MUNGANIA.....RESPONDENT.

RULING

The application is a Notice of Motion dated 27th April 2010 brought under O.XLI Rule 4 of the Civil Procedure Rules, Section 3 and 3A of the Civil Procedure Act and all other enabling Provisions of law. It seeks one prayer that the court do issue an order to stay the execution of the judgment and the orders of Maua Case No. 115 of 2008 made on the 11th February 2010 pending the hearing and determination of the appeal filed herein.

The application is supported by the ground on the face of the application as follows: 1-4 copy.

The application is grounded on the annexed affidavit of the 2nd appellant Joshua Gatimu Igweta of the same day.

The application is not opposed. Mr. Otieno for the 1st to the 7th respondent and Mr. Maroro for 8th and 9th respondent filed no responses to the instant applications despite being served with the application and with the notice of hearing on the 29th of October 2010. The two counsels for the respondents did not make any submissions in response to the applications.

Mr. Riungu urged the application on behalf of the appellants he relied on the grounds on the face of the application and also on the supporting affidavit sworn by the 2nd appellant.

I have considered the application in the supporting affidavit of Joshua Igweta he explains that judgment was entered in favour of the respondents against the appellants on the 11th February 2010. He states that the seven appellants have all lodged an appeal against the decision of the SPM Maua Case No. 115 of 2005. The 2nd appellant/applicant deposed that the land on which his private school by the name Glory

Junior School stands was the subject matter of suit. The affidavit does not give any facts of the case. However I have read the judgment of the learned trial magistrate which is the subject of the appeal. I note that the learned trial magistrate made two orders. The 2nd order granted the plaintiff in that suit a permanent injunction directed against the seven defendants who are the applicants in the instant application, restraining them from interfering, cultivating developing, alienating or whatever interfering with the locus in quo that is the suit properties.

The 2nd applicant in the supporting affidavit deposes that unless a stay of the judgment is granted pending the hearing and determination of the appeal. The appellants appeal stands to be rendered nugatory and substantial loss will be suffered by the appellant because of the school. The 2nd applicant has offered to furnish suitable security as the court may deem fitting.

Dated Signed and delivered at Meru this 19th day of November 2010

LESIIT, J

JUDGE

In the presence of the parties

Kirimi – Court Clerk.

Mr. Riungu appellants/applicant

Mr. Otieno for 1st to 7th respondents

Mr. Maroro for the 8th and 9th respondents

LESIIT, J

JUDGE