

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU
Civil Case 67 of 2002

FRANCIS NJERU RABUTA.....PLAINTIFF

VERSUS

NJUKI RABUTA.....DEFENDANT

RULING

Application dated 8/11/2007 for stay of execution pending proceedings towards appeal in the court of appeal. The subject matter of appeal is land registered as Evurori/Nguthi/1507 affecting the applicant's title to land. The Applicant says that he is ready to give an undertaking not to dispose of the land pending the determination of the proposed application and appeal.

One fact which is disclosed is that the Respondent occupies a portion of land where he has built his homestead and the applicant undertakes to maintain the status quo.

I have read the Replying Affidavit and considered the undertakings offered by applicant particularly the fact that the Respondent has been in occupation of the 3 acres out of the land in dispute. Respondent is in possession he will not be prejudiced in the granting of stay. He will continue in occupation while the applicant can occupy the rest of the land. Considering the whole situation I am inclined to allow the application and I grant orders as prayed. In addition the Applicant shall deposit in court a sum of Shs.50,000/= as security for any order that may ultimately be found binding on him. I order the deposit to be deposited within next 30 days. The costs to the Respondent in any case.

Orders accordingly.

Dated this 1st February, 2008.

J. N. KHAMINWA

JUDGE

1/2/2008

Khaminwa – Judge

Njue- Clerk

Mr. Ithiga HB

Read in open court.

J. N. KHAMINWA

JUDGE