

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA

AT MERU

Civil Appeal 107B of 2006

JOHN MEME APPELLANT

VERSUS

PAGLOUS MWENDA RESPONDENT

(Being an appeal from the Judgment of Resident Magistrate, Hon. D.Morara, in Maua PMCC No. No.60of 2006 on 20th September, 2006).

RULING

This application was argued *exparte* as there was no appearance or reply to it by the respondent who was duly served.

It seeks stay of execution in Maua CMCC No.60/2006. Petition of appeal has been filed challenging the decision of the subordinate court to strike out the applicant's defence and the entering of judgment. Following these events, the respondent has filed an application directed to the Executive Officer of that court to sign transfer documents to effect the transfer of one acre of the applicants parcel of land to the respondent.

A stay will be ordered if the applicant demonstrates that he stands to suffer substantial loss if it is not granted. The dispute involves land. If the pending proceedings are not stayed and the suit land transferred to the respondent the applicant is likely to suffer substantially as the respondent may either dispose of the same to a third party or waste it.

The second consideration is whether the applicant has given undertaking as to security and finally the court must be satisfied that the application for stay has been brought without unreasonable delay.

The decision giving rise to this appeal was delivered on 20th September, 2006, that is one month later. In my view there has been no unreasonable delay.

For these reasons it is ordered that there shall be a stay of execution of the decree and further orders herein pending the hearing and determination of this appeal.

Costs to be in the appeal.

DATED AND DELIVERED AT MERU THIS 7th DAY OF May, 2007

W. OUKO

JUDGE