



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT NAIROBI (NAIROBI LAW COURTS)

CIVIL CASE 3044 OF 1996

SAMSON NJUGUNA PLAINTIFF

VERSUS

RUTH WAITHRIA NGANGA 1ST DEFENANT

HANNAH WANJIKU MURINGA 2ND DEFENDANT

RULING

I: Procedure

1. This court heard and finalized the trial between the parties herein on 28 February 2007.
2. The plaintiff herein not being satisfied with the decision of this court accordingly appealed to the court of appeal. He now bring the application dated the 15 March 2007 seeking the stay of execution of this courts orders pending appeal.

II: Application for stay of Execution

3. The parties herein have had an on going dispute over land for over 40 years. I have finalized this suit and given each party their respective portion. The advocate for the plaintiff states that the court had not specified how the division would be. His house may be demolished in the process on one suit land. Further there are crops on the land that belong to him. How would this be accounted for?

4. The advocate for the defendant object to this application and says that the parties would take into consideration the plaintiffs' house.

III: Should stay of execution be issued pending appeal?

5. I find that the reasons going to appeal given by the plaintiff did not suffice to seek a stay of execution. The plaintiff is free to come to this court to deal with the sub division on the land. I believe this may be done by parties. Failure to agreeing they are at liberty to apply and they would accordingly direct how the sub division ought to be done through experts.

6. I accordingly note further that the plaintiff had been in possession of land not his. He is free to up root his crops or sell the same to the occupiers now placed by this court.

7. This application is accordingly dismissed with costs to he defendants

Dated this 27th day of June 2007 at Nairobi.

M.A. ANG'AWA

JUDGE

N.G. Kimani for Kimani & Co. Advocates for the plaintiff

B Jonge for Baya & Co. Advocates for the defendant