

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA
AT NAIROBI
CIVIL APPEAL NO 1090 OF 2004

PATRICK GITHAE KIRENGA APPELLANT
VERSUS
CHEGE WAINAINA RESPONDENT

RULING

In this application, dated 22nd December, 2004, the Applicant seeks stay of execution of the Orders of the lower court dated 19th November, 2004.

By those orders, the lower court, granted vacant possession of the suit land to the Respondent who had demonstrated to the satisfaction of the lower court, that he was the lawful registered owner of the same.

The Applicant says that he has been in possession of the suit land since 1993 having “bought” the same from one James Kariuki Njoroge, Administrator of the Estate of Paul Njoroge Njuguna, the owner. He avers that the suit land was not transferred to him at that time pending the conclusion of the Succession Cause relating to the estate of the late Paul Njoroge Njuguna. He claims that the Respondent has obtained title fraudulently.

He has not shown to this Court what claim, if any, he has against the Respondent, who is presently the registered owner of the suit land. The Applicant’s claim, it would appear, is against his vendor, James Kariuki Njoroge, who is not a party to this suit, and against whom no suit appears to exist. As between the Applicant and the Respondent, I have before me two competing interests – the Applicant who claims to have bought the suit property from a third party, and the Respondent who is the registered owner.

As this court is not satisfied, at this time, that he has any claims against the Respondent, it would not be just to grant stay of execution, which would defeat the ownership interests of the Respondent. In any event, the Applicant has not demonstrated what substantial loss, if any, he would suffer if an order for stay were not granted at this time.

Accordingly, this application is dismissed with costs to the Respondent.

Dated and delivered at Nairobi this 27th day of April, 2005.

ALNASHIR VISRAM

JUDGE