



**REPUBLIC OF KENYA  
IN THE HIGH COURT OF KENYA  
AT NAKURU**

**Civil Case 583 of 1996**

**JOHN NGINYI MUCHIRI.....PLAINTIFF**

**VERSUS**

**JOHN KAMUNYA MUTAHI.....1ST DEFENDANT**

**JOB GICHURU NJOROGE.....2ND DEFENDANT**

**ESTHER NJOKI KAMUNYA.....3RD DEFENDANT**

**STEPHEN NGUGI KARIUKI.....4TH DEFENDANT**

**LYDIA JOB WAIRIMU.....5TH DEFENDANT**

**RULING**

On 28th April, 2005, this court delivered a judgment in favour of the plaintiff as against the defendants and ordered that the title deeds for parcels of land registered as **NAKURU/CEDAR/138, 139, 140 & 141** be cancelled and one title deed representing the four titles aforesaid be issued to the plaintiff. The defendants were further ordered to vacate the suit premises forthwith. The second and the 5th defendants have now filed an application seeking stay of execution of the said judgment pending the hearing and determination of an appeal to the Court of Appeal. They have already filed a Notice of Appeal and applied for certified copies of the proceedings and judgment so that they can prepare the record of appeal. The second applicant, Esther Njoki Kamunya stated in her affidavit in support of the said application that she was the registered proprietor of **Nakuru/Cedar Lodge/141** on which she had her matrimonial home where she was living with her family of 7 children and they had no other land. She stated that they had resided on the said land for more than twenty years and had developed the same. She deposed that she stood to be evicted from her home unless the stay order was granted as prayed. She further stated that she was ready to deposit the original title documents with all the necessary transfer documents duly signed as security pending the hearing and determination of the appeal.

Mr. Karanja-Mbugua for the applicants submitted that they stood to suffer substantial loss unless their application was allowed.

Mr. Ikua for the respondent opposed the application and stated that the applicants' structures that were on the ground were temporary in nature and so the applicants would not suffer substantial loss. With regard to the proposed security, counsel submitted that if the application was granted, alternative security other than deposit of the titles and the other documents as proposed ought to be ordered.

It is not in dispute that this court has power to grant stay of execution of its own orders pending appeal provided that sufficient cause for doing so is shown by such an applicant and other requirements as set out under Order XLI Rule 4 of the Civil Procedure Rules are met. The court has to be satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay. A further requirement is that such security as the court may order for the due performance of such decree or order as may ultimately be binding on the applicant be given by the applicant.

My view of this application is that the subject matter of the judgment, being land on which the matrimonial home of the applicant and her family members stand, the applicants ought to be allowed to

challenge the judgment of this court in the court of the last resort but before they do so, the status quo ought to be maintained. There is no denial that the application was filed without undue delay, just within one week from the date of delivery of the judgment.

I do not agree with the respondent's counsel's argument that the applicants do not stand to suffer substantial loss in the event that their application is not allowed allegedly because their houses on the suit premises are merely temporary structures. One's home, be it a castle or a ramshackle, depending on an individual's station in life is very important and of immense intrinsic value to him and I cannot think of any greater loss that a person would suffer than loss of one's home. It is for this reason that I believe the applicants ought to be afforded an opportunity to argue their case in the highest court in the land.

I therefore allow the application but order that the applicants deposit in court the respective title deeds for the suit premises together with signed blank transfers. These documents will be held by the court and will be kept in a safe place until the appeal is heard and determined. Further, the applicants shall within seven days from the date hereof file and give to the respondent an undertaking that they will not, individually and/or collectively use the suit premises in any manner that is likely to amount to waste thereof or carry thereon such activities as are likely to diminish the value of the land in question. These orders should also be extracted and registered against the title deeds in the appropriate land registry.

The applicants will bear the costs of this application.

DATED, SIGNED & DELIVERED at Nakuru this 15th day of July, 2005.

**D. MUSINGA**

**JUDGE**