



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ELC. CASE NO. 1757 OF 2001**

**STEPHEN WAITHAKA GATUMBI**

*As Administrator of the Estate of the Late*

**GATUMBI WAITHAKA (DECEASED).....PLAINTIFF**

**=VERSUS=**

**FRUMENCE KARIUKI MURIU**

*As Administrator of the estate of the Late*

**MORRIS MURIU MAGUTA NGEA (DECEASED).....DEFENDANT**

**RULING**

1. This court (Mwangi J) rendered a Judgment in this suit, dated 18/7/2017, in which he granted the following final orders:

*a) The plaintiff's suit against the defendant is hereby dismissed.*

*b) The defendant's counter-claim is allowed to the extent that:*

*i. The defendant is hereby declared the right person to administer 2/11 acres out of Kiganjo/Mundoro/460 registered in the name of his late father on behalf of the estate of his late father.*

*ii. The plaintiff will forthwith execute the necessary documents that will pave the way for the sub-division of the land and its distribution to the beneficiaries, failure to which the Deputy Registrar is hereby authorized to execute the said documents on the plaintiff's behalf.*

*iii. The plaintiff shall give vacant possession of the part of the suit land which he has encroached on.*

*c) Each party shall bear their own costs of the suits*

2. Subsequent to that, the plaintiff brought an application dated 5/12/2017 seeking stay of execution pending the hearing and determination of an intended appeal. On 20/9/2018, the Court [Eboso J] rendered a ruling on the application in the following terms:

*"I have carefully scrutinized the materials presented to the court. The suit property does not have any permanent developments on it. The applicant contends that he grows food crops on the two acres. In the judgment dated 18/7/2017, Njoroge J decreed that the applicant surrenders to the respondent 2 out of 11 acres share out of Kiganjo/Mundoro/460. In view of the fact that there are no permanent developments on the suit property and the applicant does not reside on the suit property, it is my view that this is not a proper case that deserves an unqualified stay order. I will allow the decree in this suit to be executed through transfer of the 2 acres to the defendant as ordered by the court but preserve the suit property to the extent that there shall be no subsequent transfer of the said two acres from the defendant to any third party within the next twelve months from the date of this ruling. The defendant shall have possession of the suit property in tandem with the judgment of the court. It is hoped that the limited and qualified stay herein will afford the applicant ample time to prosecute the contemplated appeal while the suit property remains preserved for a period of twelve months."*

3. On 5/12/2019, the defendant brought an application dated 5/12/2010 seeking the following orders:

*a. Spent*

*b. That this Honourable Court be and is hereby pleased to issue an order directing that the plaintiff/ respondent, his agents, servants or whomsoever occupying land to grant the Defendant/ Applicant vacant possession of parcel of land known as Title No. Kiganjo / Mundoro/ 3057.*

*c. That the OCS Gatundu Police Station do enforce compliance of orders so granted.*

4. The said application dated 5/12/2019 is the subject of this ruling. It was supported by the defendant's affidavit sworn on 5/12/2019. The plaintiff opposed the application through a replying affidavit sworn on 20/1/2020.

5. In summary, the case of the defendant/applicant is that Judgement was rendered in his favour in July 2017. The plaintiff was subsequently granted a stay order valid for twelve (12) months from 20/9/2018. The stay period lapsed in September 2019. The suit property was parcelled out and registered in the name of the defendant but the plaintiff has declined to peaceably give possession to the defendant as ordered by the Court. Consequently, he seeks the above orders.

6. The case of the plaintiff/respondent is that he was aggrieved by the judgment in this suit and he filed a notice of appeal against the said Judgment on 3/8/2017. He adds that typing of the proceedings has taken long and he has not been supplied with copies of the proceedings, hence he has not been able to file his appeal.

7. I have considered the application, the response thereto, and the parties' respective submissions. The single question to be answered in this application is whether the applicant should be accorded police assistance in the execution of the decree in this suit.

8. Judgment in this suit was rendered by Bor J on behalf of Mwangi Njoroge J on 26/7/2017. The subsequent stay order granted by this Court [Eboso J] on 20/9/2018 lapsed in September 2019. No application was brought for extension of the stay order. There is no evidence of any subsequent stay order by the Court of Appeal. The defendant is currently the registered proprietor of the 2 acre portion granted to him vide the Judgment of the Court. In the circumstances, I find merit in the defendant's application dated 5/12/2019 and grant the application in terms of prayers (b) and (c). The defendant/applicant shall have costs of the application

**DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 28TH DAY OF JANUARY 2021.**

**B M EBOSO**

**JUDGE**

**In the presence of:-**

Mr Kinyanjui for the Plaintiff

Mr Muli for the Defendant

June Nafula - Court Clerk