

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT MACHAKOS
HIGH COURT CIVIL CASE NO. 302

BENSON MULWA MULANDI ::: PLAINTIFFS

VERSUS

MACHAKOS RANCHING CO. LTD ::: DEFENDANT

R U L I N G

The application dated 19/10/04 was coming up for hearing today the 10/12/04. The hearing date was taken by consent of both counsels when they appeared before the court on 25/11/04.

The application was presented to court on 22/10/04 under Certificate of Urgency. The court granted an order of stay on condition that 300,000/= was deposited in court as security. The applicant complied with the said order. The Notice of Motion was set down for hearing on 10/11/04 but that date the Respondent's counsel Mrs Mwangangi sought an adjournment for reasons that she had only been served on 24/1/04 and had not been able to get in touch with her clients who are ten. The application came up for hearing again on 25/11/04. On that day Mr Munyasia for applicant claimed that he had just been served with the replying affidavit and was not able to proceed. It was adjourned to today. Today Mr Munyasia is not in court. Mr Nyakeri holding his brief claims that he was instructed that the application be withdrawn with costs. Mrs Mwangangi objects to withdrawal of the said application unless the court gives conditions that the applicant should not bring other applications of that nature and that the Respondent can proceed with the execution because she believes that this is a ploy by Mr Munyasia to filing another application and that Mr Munyasia had earlier filed an application for stay dated 19/6/03 which is still on the file not prosecuted and yet he filed the present.

This application came under Certificate of Urgency. The parties should, therefore, treat it with the urgency that it serves.

There is no good reason why Mr Munyasia was not present today or why he wants to withdraw the application. The application had been adjourned three times on the request of both parties. Mrs Mwangangi does not seem to be objecting to withdrawal but invokes order 24 Rule 2 (2) which allows a party to withdraw a claim with terms as to costs or the filing of any other suit. Since the appellant has not given any reason as to why he wants to withdraw the application, it would be mischievous of the applicant to come up with a similar application. The court will allow the withdrawal of the application, a discharge of the interim orders and that being so, the Respondent has the right to proceed with execution. The court will be unwilling to grant any interim orders in the event that the applicant files a similar application as that would amount to an abuse of court process. Costs of the application to the Respondents.

Dated at Machakos this 14th day of December 2004

Read and delivered in the presence of

R.V. WENDOH

JUDGE