



**REPUBLIC OF KENYA**

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

**CHUKA ELC CASE NO. E003 OF 2021**

**JACOB NJERU KARUKU.....APPELLANT**

**VERSUS**

**NJAGI NJUGUNA.....RESPONDENT**

**RULING**

1. This application is dated **12<sup>th</sup> April, 2021** and seeks the following orders:

- 1.THAT** this Application be certified urgent and the same be heard *ex parte* in the first instance in view of its urgent nature.
- 2.THAT** the Honourable Court be pleased to grant the firm of Matunda & Co. Advocates leave to come on record for the Appellant.
- 3.THAT** pending the hearing and determination of this Application *inter-partes*, this Honourable Court be pleased to Order stay of execution of the Ruling delivered by the Honourable N Kahara(SRM) on 8<sup>th</sup> April, 2021 in *in Chuka LDT 15 of 2009* and any Order arising therefrom.
- 4.THAT** pending the hearing and determination of the Appeal herein, this Honourable Court be pleased to Order stay of execution of the Ruling delivered by the Honourable N Kahara(SRM) on 8<sup>th</sup> April, 2021 in *in Chuka LDT 15 of 2009* and any Order arising therefrom..
- 5.THAT** the costs of this Application be provided for.

2. The application has the following grounds:

**1.Unless** this application seeking a stay of execution pending Appeal is heard urgently and stay granted, the Appeal herein shall be rendered nugatory thereby occasioning substantial loss and prejudice to the Appellant.

**2.The** Appellant is therefore justifiably apprehensive that unless this Court urgently gives an Order of Stay of Execution, the Respondent will proceed to execute the ruling and **evict the appellant** from the suit property anytime thereby occasioning the Appellant substantial loss.

**3.The** Appellant has an arguable appeal with good prospects of success for the reasons *inter alia*:-

- i. THE** Learned Magistrate erred in law and in fact and arrived at a decision against the weight of evidence before her.
- ii. THE** Learned Magistrate erred in fact and in law in finding that the Respondent herein had proved her case against the Appellants on a balance of probabilities and in holding that the Appellant to vacate the suit property.
- iii. THE** Learned Magistrate erred in law and fact and misdirected herself on the law and applicable case law for ordering an eviction. In fact the learned magistrate completely failed to give reasons for her determination against clear principles on what should constitute a ruling.
- iv. THE** Ruling delivered by the learned magistrate was devoid of any points for consideration by the Court, points for determination and reasons for the said decision in contravention to mandatory requirements of Order 21 rule 4 of the Civil Procedure Rules, 2010.
- v. THE** Learned Magistrate erred in law and fact in failing to take into consideration the Appellants submission as she

deliberately failed to render herself on the same while the Appellants had filed and served their written submissions.

**vi. THE** Learned Magistrate erred in law and fact in ignoring the established principles on matters touching on land dispute tribunals and their adoptions thereof and in particular, she failed to ensure the principles on adoption of awards from land dispute tribunals are well met before the same is adopted and enforced.

**vii. THE** Learned Magistrate erred in law and in fact by failing to consider the Appellants' case especially its written Submissions and proceeded to issue the eviction orders on a flimsy ground that a pending appeal by the Appellant was dismissed and consequently the ruling therein was to be in favour of the Respondent. The learned magistrate therefore did not determine the matter before her on merits

**4.This** Appeal will be rendered nugatory if the stay of execution pending Appeal is not granted as prayed for the reasons *inter alia* that:-

a) The Applicant has an arguable appeal with good prospects of success.

b) Further, the Applicant would be severely prejudiced and the whole substratum of the Appeal rendered nugatory if the Respondent is allowed to proceed with the execution of the RULING & EVICT THE APPELLANT.

**5.The** balance of convenience clearly weighs in favour of the Applicant in this matter owing to the grounds of Appeal set out in the Memorandum of Appeal.

**6.The** it should be noted that this not a *money Ruling* and therefore the Respondent will not suffer any prejudice.

**7.If** the Honourable court does not intervene as a matter of urgency and stay the implementation of the impugned ruling the law of the jungle will take precedent whereof the appellant will be evicted.

**8.This** Application is not frivolous; it is arguable and has been brought without unreasonable delay.

3. The application is supported by the **affidavit of, Jacob Njeru Karuku**, the intended appellant sworn on **12<sup>th</sup> April, 2021** which states as follows:

**I, JACOB NJERU KARUKU** of postal mailing address number 7 ISHIARA, within the Republic of Kenya do solemnly make oath and state as follows:

**1. THAT** I am the appellant/applicant herein. well versed with the proceedings leading to the instant application; I am therefore competent to swear this Affidavit.

**2. THAT** I have read the notice of motion herein and been explained where necessary by my advocates on record and I swear this supporting affidavit thereof.

**3. THAT** I am aware that the Honourable Court delivered a ruling on the 8<sup>th</sup> April, 2021 in favour of the respondent herein directing that I be evicted from suit property; a copy of the ruling is exhibited and produced in the Bundle marked '**JKI**' attached hereto.

**4. THAT** there are glaring patent errors in the impugned ruling delivered by the trial court that warrant this Court to intervene and restore parity by relooking into the law and facts attendant to this matter.

**5. THAT** Being dissatisfied with the decision of the trial Court, I have preferred an appeal against the entire decision. Part of the grounds of the Appeal are shown in the Memorandum of Appeal, a copy whereof is exhibited and produced in the Bundle marked '**JKI**'.

**6. THAT** I verily I have a meritorious and arguable Appeal against the findings and the award made herein by the Honourable Court.

**7. THAT** I cursory perused the Memorandum of Appeal aforementioned reveals the Appeal raises serious matters of both fact and law to be canvassed during the main hearing of the appeal whose result is likely to be a reversal or substantial varying of the findings and the decision of the Trial Court herein including the award in favour of the Plaintiff/Respondent herein.

**8. THAT** I am persuaded that even without going through the merits of the entire Appeal, the entry of the judgment against the me is an erroneous finding and therefore cogent argument on Appeal that the Honourable court is likely to reverse upon the hearing of the Appeal

**9. THAT** I verily believe that on account of the likelihood of the reversal or varying of the impugned ruling and/or findings of the Trial Court and the award made herein, it is important that this Honourable Court be pleased to Order stay of execution and/or enforcement of the ruling herein the pending the hearing and determination of this Application and subsequently, pending the hearing and the determination of the Appeal.

**10. THAT** I therefore reiterate that I believe that unless the Orders sought herein are granted, I , shall suffer substantial loss and the preferred Appeal risks being rendered nugatory as a result.

**11. THAT** in earnest preparation of this Appeal, I have made an application requesting for certified copies of the proceedings and judgment hence no party will suffer prejudice if stay is granted. A copy of the letter requesting for proceedings whereof is exhibited and produced in the Bundle marked '**JKI**'.

**12. THAT** to the best of my knowledge, I have moved with expedition on making this Application after instructing Counsel and there has been no unreasonable delay in moving the Honourable Court.

**13. THAT** I verily believe that my Application herein is meritorious and the Orders sought are proper to be made and I urge the Court to allow the Application.

**14. THAT** I also believe that this Application is made in good faith, and in the interests of justice and I verily believe that the same should be allowed by the Honourable Court.

**15. THAT** I now on oath do produce the Bundle marked and exhibited as '**JKI**' duly paginated being the Bundle of the Documents relied on by the Applicant in support of this Application.

**16. THAT** what is deponed to herein is true to the best of my knowledge, information and belief.

4. On **11<sup>th</sup> May, 2021**, the appellant's advocate asked the court to allow him to come on record on behalf of the appellant so that he can canvass other matters in this intended appeal.

5. In the interest of justice, I grant prayer 2 in the application. The other prayers in the application will be canvassed interpartes.

6. The intended appellant is granted 30 days to file and serve a record of Appeal.

7. Parties will come back to court for **directions on 14<sup>th</sup> June, 2021**.

**Delivered in open Court at Chuka this 11<sup>th</sup> day of May, 2021 in the presence of:**

CA: Ndegwa

Matunda for the Intended Appellant

Gitari Muthomi for the Intended Respondent

**P. M. NJOROGE,**

**JUDGE.**