



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

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

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

**VERSUS**

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

**RULING**

1. This application is dated **2<sup>nd</sup> June, 2021** and it has been brought to court under Article 159 of the Constitution of Kenya, 2010, Sections 1A, 1B and 3A of Civil Procedure Act, Cap 21, Laws of Kenya, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, 2010, the inherent powers of the court and all other enabling provisions of the law.

2. The application seeks the following orders:

**1.THAT** this Application be heard *ex parte* in the first instance in view of its urgent nature.

**2.THAT** pending the hearing and determination of the Application dated 12<sup>th</sup> April, 2021 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 Chuka LDT 15 of 2009* and any Order arising therefrom.

**3.THAT** the costs of this Application be provided for.

3.**The** application is supported by the affidavit of Nimrod Matunda, the applicant's advocate, and has the following grounds:

**1.ON** 11<sup>th</sup> April, 2021 the Honourable Court considered the Notice of Motion dated 12<sup>th</sup> April, 2021 and fixed the same for directions on 14<sup>th</sup> June, 2021.

**2.UNFORTUNATELY**, the Respondent herein has made deliberate plans, obtained eviction orders from the lower court and has embarked on a mission to evict the Appellant on 8<sup>th</sup> June, 2021 in order to circumvent and defeat the hearing of the Application dated 12<sup>th</sup> April, 2021 and ultimately render the intended Appeal nugatory.

**3.THE** Appellant is therefore justifiably apprehensive that unless the Honourable Court intervenes now and grants an Order of Staying the planned eviction, the Respondent will **proceed to execute against the Appellant on 8<sup>th</sup> June, 2021** and evict him thereby occasioning the Appellant substantial loss and rendering the Appeal an academic exercise.

**4.THERE** is real and imminent danger that unless prayer 3 on the Notice of Motion dated 12<sup>th</sup> April, 2021 as sought is granted in the first instance, the Respondent shall execute before the filed Appeal is heard and determined thereby exposing the Appellant to irreparable loss and damage and further render the appeal nugatory and merely academic.

**5.THE** Appellant therefore seeks the intervention of the Honourable Court, to stay in the interim the intended eviction in term of prayer 3 on the substantive application dated 12<sup>th</sup> April, 2021 until when parties appear before court on 14<sup>th</sup> June, 2021 for further directions.

**6.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.

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

4. When the matter came up for directions on **28.6.2021**, the applicant and his advocate were not in court. The respondent's advocate, Mr. Muthomi Gitari, told the court that this court had on **7.6.2021** granted the appellant a conditional stay of execution on condition that the appellant deposited with court, as security the sum of Kshs.500,000/= within 14 days. Mr. Gitari brought to the attention of the court this court's Deputy Registrar's letter dated **24<sup>th</sup> June, 2021** in which she confirmed that the appellant had not complied with the apposite court's order. For this reason, he asked the court to dismiss the appellant's application.

5. I find as a fact that the appellant has not complied with the court order that a sum of Kshs.500,000/= being deposit for security be deposited with court within the stipulated time.

6. In the circumstances, I find the application by the respondent's advocate that the application be dismissed is meritorious. The following orders are issued:

a) Application dated **2.6.2021** is dismissed with the effect that the conditional stay of execution stands vacated and costs are awarded to the respondent.

b) The Appellant is directed to file and serve the record of Appeal **within 14 days of today**.

c) As he has undertaken, Mr. Muthomi, the respondent's advocate to serve the orders issued today upon the appellant's advocate **within 7 days of today**.

d) **Directions on 26.7.2021.**

**DELIVERED IN OPEN COURT AT CHUKA THIS 28TH DAY OF JUNE, 2021 IN THE PRESENCE OF:**

CA: Ndegwa

Muthomi Gitari for the Respondent

**P. M. NJOROGE,**

**JUDGE.**