



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC MISCELLANEOUS CIVIL APPLICATION NO. 7 OF 2021**

**JOHN BARIU DOMISIANO.....APPLICANT**

**VERSUS**

**LUCY MWAROMO MUNGANI.....1<sup>ST</sup> RESPONDENT**

**CATHERINE MUTHONI.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application is dated **8<sup>th</sup> March, 2021** and states that it has been brought to court under Order 51 Rule 1, Order 42 Rule 6 & Order 22 Rule 22 of the Civil Procedure Rules, Section 1A, 1B, 3A & 79G of the Civil Procedure Act Cap 21 Laws of Kenya, and any other enabling provisions of the law.

2. It seeks the following orders;-

1. That this application be certified urgent and be heard ex-parte in the first instance.
2. That there be a stay of execution of the judgment/Decree in Chuka CMCC 132 of 2015 (Lucy Mwaromo vs Catherine Muthoni & John Bariu) and all the consequential orders pending the inter-partes hearing and determination of this application.
3. That this honourable court be pleased to grant leave to the Applicant to file an appeal out of time against the ruling of the Honourable J. M. Njoroge (CM) delivered on the 2<sup>nd</sup> December, 2020 in Chuka CMCC 132 of 2015 (Lucy Mwaromo vs Catherine Muthoni & John Bariu).
4. That upon granting the orders in prayer No. 2 above this honourable court be pleased to issue an order for stay of execution Judgment/Decree in Chuka CMCC 132 of 2015 (Lucy Mwaromo vs Catherine Muthoni & John Bariu) pending the filling and determination of the intended appeal.
5. That costs of this application be provided for.

3. It has the following grounds:

1. That the applicant is the registered owner of land parcel No. Mwimbi/C-Magutuni 1153.
2. That the 1<sup>st</sup> Respondent had sued the 2<sup>nd</sup> Respondent, claiming an interest in the suit land. The claim was undefended and ex parte judgment was entered against the Respondent on 2<sup>nd</sup> November, 2016.
3. That despite the Applicant being the registered owner of the suit land, he was not served with any pleadings in the case before the trial court.
4. That the ex parte judgment had adverse effects on the applicant herein as the trial court ordered that the suit land registered in the applicant's name be transferred to the 1<sup>st</sup> Respondent herein.
5. That the 1<sup>st</sup> Respondent approached the trial court with an application for execution seeking to have the suit land transferred from the Applicant to himself which application was allowed.

6. That the Applicant approached the trial court with the application dated 20<sup>th</sup> December, 2019 whereby he sought orders inter alia that there be a stay of execution of the exparte judgment, that he be enjoined as an interested party and that the exparte judgment be set aside so that the suit can be heard on its merits.

7. That the Chief Magistrate's court made and delivered its ruling on 2<sup>nd</sup> December, 2020 where the court dismissed the application dated 20<sup>th</sup> December, 2019.

8. That the Applicant was dissatisfied with the said decision and preferred an appeal and he instructed his advocate on record to file an appeal.

9. That in order to file the appeal it was necessary that the advocates be supplied with a copy of the ruling.

10. That the Applicant's advocates immediately requested to be supplied with a copy of the ruling which request went unanswered.

11. That the advocates made several more requests which were finally answered on 9<sup>th</sup> February, 2021. The requisite fee was assessed and was paid promptly.

12. That upon payment of the requisite fee, the typed ruling was made available to the Applicant's advocates on record.

4. I do find that the application has merit.

5. The following orders are issued:-

a) Stay of execution is granted in terms of prayer 2 in the application PROVIDED that the applicant will deposit with court as security the sum of Kshs.600,000/= within 14 days of today FAILING which the stay of execution granted herein will automatically lapse.

b) Prayer 3 for leave to file an appeal out of time is granted and the appeal should be filed within 30 days of today.

c) Costs shall be in the cause.

Written and delivered in open court at Chuka this **21<sup>st</sup> day of June, 2021** in the presence of:

CA: Ndegwa

M/S Mwiti for the Applicant

**P. M. NJORGE,**

**JUDGE.**