



**REPUBLIC OF KENYA**

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

**ELC CASE NO. 6A OF 2011**

**ZAKARIA KIRUKI .....PLAINTIFF**

**VERSUS**

**SHADRACK MWITI .....1<sup>ST</sup> DEFENDANT**

**JANET MARINGA M'IKIARA .....2<sup>ND</sup> DEFENDANT**

**EVANGELING NKIROTE M'IKIARA .....3<sup>RD</sup> DEFENDANT**

**RULING**

1. Vide the application dated 28.10.2019, the applicant/plaintiff is seeking the following orders:

**(i) Spent.**

**(ii) Spent.**

**(iii) That this honourable court be pleased to review its orders of 2.10.2019 to the effect that paragraph b (1) be reviewed to substitute “Sum of Kshs.300,000” with bond of Kshs.300,000.**

**(iv) That this honourable court be pleased to allow one Samuel Muthuri Kirima ID. 11\*\*\*\*\* to stand surety for the applicant by depositing a logbook of his car and its valuation thereof for Kshs.300,000.**

2. The application is premised on the grounds set out on the body of the application and the affidavit of Zakaria Kiruki, the plaintiff.

3. Applicant contends that he is a man of straw and he therefore prays that the order of 2.10.2019 be varied for the applicant to substitute payment of Kshs.300,000 with a bond of Shs.300,000. In the new proposed arrangement one Samuel Muthuri Kirima desires to stand surety for the applicant by depositing a logbook of his car KAM 806P valued at Shs.300,000 as per the valuation report.

4. The respondents have opposed the application vide the replying affidavit of Julius Mutwiri who avers that the stay granted was conditional of which the stay was to lapse if the conditions were not met.

5. It is argued that the applicant has not met the conditions set out in order 45 of the civil procedure rules. It is also argued that the logbook belongs to Samuel Muthuri who is not a party to this suit so his vehicle cannot be attached. It is also averred that the existence of the vehicle is in question since a log book is but a paper.

6. I have weighed all the issues raised herein. Vide my ruling dated 2.10.2019, I directed the applicant to deposit the sum of Shs.300,000 as security as one of the conditions for the grant of stay orders. This order has not been complied with. The applicant prays for a review of the said order so as to avail a surety instead of a sum of Shs.300,000.

7. The applicant had approached this court for a prayer of stay of execution vide his application of 11.2.2019, brought under order 42 rule 6 amongst other provisions of law. The issue of security is captured under **order 46 rule 6 (2) (b)**. Thus, applicant was aware that the issue of security was a factor of consideration in the prosecution of that application.

8. However, the applicant did not offer any security. The issue of him being a peasant farmer was only raised during the submissions where it was stated that “the applicant is ready to offer a reasonable security or collateral as a condition for stay”. Applicant was not even specific on what was “**reasonable to him**”. He left it to chance. He cannot now claim that the orders given on 2.10.2019 should be varied.

9. Further, the offer of a vehicle owned by one Samuel poses a challenge to this court. He is not a party herein and the court is not in physical control of the actual vehicle.

10. All in all, I find that the application is not merited. The same is hereby dismissed with costs to respondents.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 26<sup>TH</sup> FEBRUARY, 2020 IN THE PRESENCE OF:-**

C/A: Kananu

Ashaba holding brief for A.G Riungu for plaintiff

Gikonyo holding brief for E.G Mwangi for 2<sup>nd</sup> and 3<sup>rd</sup> respondents

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**