



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT BUNGOMA
CIVIL SUIT NO.123 OF 2010 (O.S.)

CHARLES ANGUCHO SUCHIA.....PLAINTIFF

VERSUS

ELPHAS NYAMBAKA COSMAS.....DEFENDANT

RULING

On 21/9/2016 the plaintiff / respondent filed a notice of motion under order 42 rule 6(1) of the Civil Procedure Act and section 1A, 1B, 3, 3A and 63(e) of the Civil Procedure Act.

He prayed that this application be certified urgent and be heard exparte in the first instance.

He also prayed for a stay of execution of the decree dated 27/7/2016 pending the hearing and determination of Court of Appeal No.78 of 2016 At Kisumu.

The application was supported by the affidavit of Elphas Cosmas Nyambaka of P.O. Box 499 Kitale.

The application was served on 30/8/2016. When the matter came for hearing on 13/9/2016 the respondent though served had not filed a replying Affidavit. He was awarded more time to do so and the case was fixed for hearing on 2/9/2016.

The respondent filed his replying Affidavit on 28/9/2016.

I have perused the application and I order that in the interests of justice that the application shall be allowed and execution shall await the result of the filed appeal.

The costs of this application shall abide in the appeal.

Ruling read in open court.

DATED and DELIVERED at BUNGOMA this 10th day of March, 2017

S.N. MUKUNYA

JUDGE

In the presence of:

Court Assistants - Chemtai/Joy

Mr. Watangaa - For the Petitioner

Mr. Anwar - For the defendant