



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 3 OF 2020

JEREMIAH MUGENDI KIAMBI.....APPELLANT

VERSUS

JOSEPH MURORI KABARI & ANOTHER.....RESPONDENT

RULING

1. Vide the application dated 28.5.2020, applicant seeks an order of stay of execution of the judgment in Githongo PMCC No. 42 of 2015 pending the hearing and determination of an appeal.

2. Applicant avers that he was aggrieved by the decision of the trial court and he has been served with a notice of eviction. He contends that he is in possession of the suit land. He has relied on the case of **S.M Githunguri vs Jimba credit corporation Ltd (2) 1988 eKLR**.

3. The respondents have opposed the application via the replying affidavit of the 2nd respondent. It is averred that the judgment was delivered on 18.12.2019 and applicant was given 5 months to vacate the suit land but has refused to comply. It is also averred that applicant has another parcel of land No. Abothuguchi/Kijja/3 where he can relocate to. It is also contended that applicant has not provided any security.

4. I have considered all the issues raised herein and the submissions of the parties. Order 42 rule 6 (2) of the civil procedure rules provide that:

“No order for stay of execution shall be made under sub-rule (1) unless—(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.

5. To grant or to refuse an application for stay of execution pending appeal is discretionary in that the court when granting a stay, it has to balance the interests of the applicant with those of the respondent. In determining this balance, the court gives due consideration to the three criteria set under order 42 rule 6 (2) of the **Civil Procedure Rules**, that is to say:

(1) Whether appellant stands to suffer substantial loss,

(2) Whether the application has been brought without delay and

(3) Whether there is security.

6. On the issue of substantial loss, **Gikonyo J in Wangalwa & another vs Agnes Naliaka Cheseto Misc. application no. 42 of 2011 (2012) eKLR** stated that;

“The appellant must establish other state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal”.

7. It has emerged that the applicant is the one in occupation of the suit land and he has been served with a notice of eviction. I do find that he stands to suffer substantial loss if the application is not allowed.

8. On the issue of delay, I find that the applicant had apparently been given three months to vacate the land, which period can be termed as a stay of the judgment. The period lapsed on 18.3.2020, whereby the uncertainty in courts operations had set in due to the covid 19 pandemic.

9. On the issue of security, I note that applicant has offered none.

10. In the circumstances, I proceed to grant a conditional stay of execution of the judgment in the following terms:

(1) There is to be a stay of execution of the judgment in Githongo PMCC No. 42 of 2015 on condition that applicant deposits in court security amounting to Shs.500,000 within 30 days, failure to which the order for stay shall lapse.

(2) The stay granted herein shall last a period of one year.

(3) The DR to call for the lower court file.

(4) Applicant is to meet the costs of this application.

DATED, SIGNED AND DELIVERED AT MERU THIS 14TH DAY OF JULY, 2020

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this ruling was given on 29.6.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the *Civil Procedure Rules* which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE