



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA AT MERU
LAND AND ENVIRONMENT CASE NO. 88 OF 2015

STEPHEN NDUMBA MUKANGU.....PLAINTIFF

VERSUS

FREDRIC KINYURU MUKANGU.....DEFENDANT

R U L I N G

This application is dated 29.9.2015 and seeks orders:

1. *That service of this application be dispensed with in the first instance.*
2. *That there be stay of proceedings in Meru Chief Magistrates Civil Case No. 55 of 2015 pending the hearing and determination of this application.*
3. *That there be stay of proceedings in Meru Chief Magistrates Civil Case No. 55 of 2015 pending the hearing and determination of this suit.*
4. *That the court do grant stay of proceedings in Meru CMCC No. 55 of 2015 on 1st October, 2015 pending the hearing and determination of this application inter-partes.*
5. *Any other relief that this Honourable court finds fit.*
6. *Costs of the application be provided for.*

The application is based on the annexed affidavit of Stephen Ndumba Mukangu and on the following grounds.

(a) That the plaintiff and the defendant are brothers.

(b) That the plaintiffs deceased mother Zipporah Munyange in 1962 or thereabouts caused land parcel No. Kiirua/Naari/302 measuring 8 acres to be registered in the name of her elder son the defendant herein, since it was extremely difficult and/or impossible for a woman who did not have a National Identity Card to be allocated and hold land at the time.

(c) That the defendant was thus registered as proprietor of land parcel No. KIIRUA/NAARI/302 to hold in trust for himself, his mother and the plaintiff (his brother).

(d) That each of the plaintiff and defendant occupied, resided on and utilized 3 acres each while the deceased mother occupied the remainder of the 2 acres.

(e) That the defendant has refused, ignored and/or neglected to determine the customary law trust and sub-divide the suit land between himself and the plaintiff.

At the ex parte stage, Advocate, Frank Gitonga for the applicant sought stay of proceedings in Meru CMCC No.55 of 2015. He submitted that in this suit the applicant sought determination of ownership while in CMCC No. 55 of 2015, the issue of eviction of the applicant was key. He said that stay of proceedings would obviate the possibility of conflicting decisions being made by different courts.

The stay of proceedings of judicial proceedings, though possible and necessary, in suitable situations, should not be issued casually. All courts have Constitutional and Statutory underpinnings. I find it necessary to hear this application inter partes before this court can exercise its judicial discretion. In any case, the reason proffered for urgency that the matter in CMCC No.55 of 2015 was to be heard on 1.10.2015 is no longer valid as today is 5.10.2015.

In the circumstances, I decline to grant an order of stay of proceedings in Meru CMCC No. 55 of 2015 at this ex parte stage. I rule as follows:

1. ***Matter is NOT certified urgent.***
2. ***This application will be heard on a priority basis.***
3. ***Inter partes hearing of the application to take place on 12.10.2015 after the plaintiff has properly served the defendant.***

It is so ordered.

Delivered in Open Court at Meru this 5th day of October, 2015 in the presence of:

Cc. Lilian/Daniel

Frank Gitonga for the Applicant.

P. M. NJOROGE

JUDGE