

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KISII

CIVIL SUIT 122 OF 2005

JOHN ANGWENYI.....PLAINTIF/APPLICANT

VERSUS

THOMAS CHACHA CHACHA.....DEFENDANT/RESPONDENT

RULING

The defendant/Applicant seeks a review of orders made on 5th November, 2007. He stated that there is a mistake or error apparent on the face of the record as the main suit was unlawfully and unprocedurally disposed of by way of interlocutory proceedings. In the ruling delivered on the aforesaid date, the court granted injunctive orders to restrain the defendant, his servants and/or agents from trespassing onto land parcel No. BUGUMBE/ MABERA/ 616 until the final determination of this suit. The court further ordered that the defendant, his servants and/ or agents be evicted from the aforesaid parcel of land, hereinafter referred to as “**the suit land**”. The suit land is registered in the name of the plaintiff. The plaintiff has already obtained an eviction order which was supposed to be executed by the O.C.S. Isebania Police Station. However, Karanja. J, issued a temporary stay of execution on 4th April, 2009. Those orders have been extended pending hearing and determination of this application.

The application was opposed by the plaintiff who filed grounds of opposition. He stated, inter alia, that there is no mistake or error on the record to warrant any review. He further stated that there has been inordinate delay in bringing the application for review.

Mr. Kisera for the defendant/applicant and Mr. Masese for the plaintiff/respondent made brief submissions which I have taken into account. It was stated by Mr. Masese that the defendant is the owner of land parcel No.BUGUMBE/ MABERA/ 615 but he has wrongfully annexed the suit land.

The ruling sought to be reviewed was delivered by my sister, Gacheche,J. She was alive to the fact that by granting the orders she did, a major part of the relief claimed in the suit will have been dealt with.

Prima facie, the plaintiff is the registered owner of the suit land while the defendant is either the registered or beneficial owner of the neighbouring parcel No.615.

The defendant alleges that he purchased the suit land and has filed a caution against the title claiming purchaser’s interest. He has also built homes for his wives on the two parcels of land.

While I am not prepared to set aside the orders made on 5th November, 2007, I think the interests of justice demand that the same be stayed pending hearing and determination of the suit. If the defendant’s houses are demolished from the suit land and the plaintiff fails in his suit, considerable suffering and damage shall have been occasioned to the defendant. If on the other hand the plaintiff succeeds in his suit, the defendant will have to be evicted.

Consequently, I grant stay of execution of the orders made on 5th November, 2007.

The cost of the application shall be in the cause.

Dated, signed and delivered at Kisii this 6th day of July, 2009.

D. MUSINGA.

JUDGE