

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL
AT NAIROBI
(CORAM: OMOLO, TUNOI & SHAH, JJ.A.)
CIVIL APPLICATION NO. NAI. 318 OF 1998 (124/98UR)
BETWEEN**

**M'MURUNGI M'MBWIRIAAPPLICANT
AND
M'MUNGANIA M'IKIARARESPONDENT**

**(Application for stay of execution from Judgment and Decree of the High Court of Kenya at
Nairobi (Justice Etyang) dated 7th August, 1998**

in

H.C.C.C. NO. 187 OF 1997 (O.S.)

RULING OF THE COURT

The applicant by this application brought under rule 5(2)(b) of the Rules of this Court asks us to stay the execution of the judgment and order made by the learned Judge on 7th August, 1998 whereby he ordered that one acre of land be exercised from the applicant's land parcels numbers Nkuene/Kathera/1374, 1375 and 1378 and the same be registered in favour of the respondent.

As can be seen from the documents and the transfer instruments, the Executive Officer of the High Court of Kenya at Meru has already effected the transfer in favour of the respondent and Title Deed was issued on 7th January, 1999. It is obvious, therefore, that this application has been overtaken by events and any orders that we were minded to make may be in vain. However, we have been assured by Mr. Kithinji, counsel for the respondent, that the land, the subject matter of the intended appeal, will not be transferred to third parties or in any way alienated or interfered with during the pendency of the intended appeal.

In the circumstances, this application fails and is hereby dismissed. We make no order as to costs.

Made at Nairobi this 24th day of March, 1999.

R.S.C. OMOLO

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JUDGE OF APPEAL

P.K. TUNOI

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR