



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT CHUKA**

**CHUKA ELC CASE NO. 12 OF 2019**

**PETER KAARIA.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**FREDRICK GITONGA.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**VERSUS**

**ALBERT MUSYOKA MURIUNGI.....DEFENDANT/RESPONDENT**

**RULING**

1. This application states that it has been filed in court under Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules and sections 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions of the law.

2. The application seeks the following orders:

1. That this application be certified urgent and the same be heard ex-parte in the first instance.
2. That honourable court be pleased to grant stay of execution against the respondent pending hearing and determination of this application interparties.
3. That honourable court be pleased to grant a stay of execution of the judgment/decree dated 7<sup>th</sup> day of December, 2020 pending the hearing and determination of the applicants intended appeal in the Court of Appeal.
4. That this honourable court do issue such further better orders as will meet the ends of justice.
5. That the costs of this application be provided for.

3. The application has the following grounds:

1. That the applicant has a serious and arguable appeal with an overwhelming prospects of success.
2. That if the said stay of execution is not granted the applicants appeal will be rendered nugatory and appellant will suffer irreparable loss and damage.
3. That unless this application is granted the respondents (sic) threatens to levy execution against the applicant
4. That applicant is willing to bide by any such reasonable conditions as the court may deem fit and proper to order.
5. That application ought to be granted in the interest of equity and justice.

4. The application is supported by the affidavit of Albert Musyoka Muriungi sworn on **16<sup>th</sup> December, 2020.**

5. Contrary to the provisions of Order 9 Rule 9 of the Civil Procedure Rules, the advocate prosecuting this matter has not obtained leave of court or filed a consent with the previous advocate, as he has come on record after the apposite judgment was delivered. He is therefore not properly on record.

6. **NEVERTHELESS** Mr. Mutuma, the applicant's advocate, told the court that unless stay of execution is granted, the applicant would be evicted from the suit land and this would render the applicant's intended appeal to the Court of Appeal nugatory.

7. Mr. Mutani, for the respondent opposed the application and told the court that the applicant's advocate had not sought the leave of court or entered into a consent with the previous advocate and, therefore, was improperly on record. He also told the court that a stay of execution should not be granted in favour of a trespasser.

8. I have carefully considered this application and its supporting affidavit. I note that the applicant avers that he is willing to abide by the terms and conditions issued by the court. I issue the following orders:

a. Conditional stay of Execution is hereby granted in terms of prayer 2 in the application and in terms of Order 42 Rule 6 2(b) of the Civil Procedure Rules **PROVIDED** that the applicant will, within 14 days of today, deposit with court the sum of Kshs. One Million Five Hundred Thousand Only (Kshs.1,500,000/=) as security for the due performance of such decree or order as may emanate from this court's Judgment delivered on 7<sup>th</sup> December, 2020 **AND FAILURE** to do so within the stipulated period shall automatically lapse the conditional stay granted herein.

b. Costs to be in the cause.

**Delivered in open Court at Chuka this 22<sup>nd</sup> day of December, 2020 in the presence of:**

CA: Ndegwa

Mutuma for the applicant/defendant

Mutani for the plaintiffs/respondents

**P. M. NJOROGE,**

**JUDGE.**