



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

MERU ELC APPEAL CASE NO. 35 OF 2020

SAMSON THURANIRA.....APPELLANT

VERSUS

JUSTUS GITUMA MUGUNA.....1ST RESPONDENT

JOSEPH KIMUNYI.....2ND RESPONDENT

SKYLAND CONTRACTORS LTD.....3RD RESPONDENT

COUNTY GOVERNMENT OF MERU.....4TH RESPONDENT

RULING

1. This application has been brought to court under Order 45 Rule 1 & 2 of the Civil Procedure Rules and section 80 of the Civil Procedure Act.

2. The application seeks the following orders:

1.THAT this application be certified urgent and service be dispensed with in the first instance.

2.THAT pending *inter-partes* hearing of this application, there be stay of execution of the Judgment and decree in Meru CMCC NO. 290 of 2014.

3.THAT pending the hearing and determination of this application there be stay of execution of the Judgment and decree in Meru CMCC No. 290 of 2014.

4.THAT this Honourable court be pleased to review or vary its orders dated 4/11/2020 requiring the Appellant to deposit a sum of Kshs.360,000/- in court and instead order that the Appellant do furnish alternative security of an equivalent value in the form of a title deed or Motor Vehicle logbook, for the due performance of the order.

5.THAT costs be in the cause.

3. The application has the following grounds:

1. **THAT** the Appellant is aggrieved by the order dated 4/11/2020.

2. **THAT** the Appellant has made all efforts possible to raise the sum of Kshs.360,000/- in cash but he is unable to do so.

3. **THAT** the Appellant is ready to furnish alternative security of an equivalent value.

4. **THAT** there is sufficient reason to warrant a review of the said orders.

5. **THAT** the Respondent is moving with speed to execute the decree of the lower court.

6. **THAT** unless the orders sought are granted, the Applicant will suffer irreparably from the imminent execution and the pending appeal will be rendered otiose.

4. In the certificate of urgency, the applicant's advocate states that if the orders sought are not granted urgently, the appellant shall suffer an irregular execution and for that reason, the pending appeal will be rendered otiose.

5. I have considered this matter. Order 42 Rule 6 (2) (b) of the Civil Procedure Rules mandatorily requires that for an order of stay of execution to be granted, the applicant shall deposit with court such security as the court orders for the due performance of such decree or order as may be binding upon him.

6. I issue the following orders:

a) This application is **NOT** certified urgent **BUT** will be heard on priority basis.

b) Application to be properly served upon the respondents within 14 days of today.

c) Prayer 2 in the application is conditionally granted in terms of order 42 Rule 6 (2) (b) of the Civil Procedure Rules and section 63 (e) of the Civil Procedure Act **PROVIDED** that the applicant will deposit with court as security the sum of Kshs. Two Hundred and Eighty Thousand (Kshs.280,000/=) within 14 days of today and in **DEFAULT** the conditional stay granted herein shall automatically lapse.

d) This application will be heard interpartes by the Hon. Lady Justice Lucy Mbugua, at Meru on **8th February, 2020**.

Delivered in Chambers at Chuka this 22nd day of December, 2020 in the presence of:

CA: Ndegwa

P. M. NJORGE,

JUDGE.