



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

MERU ELC CIVIL APPEAL CASE NO. 23 OF 2001

UMESH MUNENE.....APPELLANT

VERSUS

ROSE EVELYNE KONJE.....1ST RESPONDENT

COMMISSIONER OF LANDS2ND RESPONDENT

DIRECTOR OF PHYSICAL PLANNING.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

MUNICIPAL COUNCIL OF MERU.....5TH RESPONDENT

RULING

1. This application is dated **8th December, 2020** and takes the following format:

NOTICE OF MOTION

(Under order 42 Rule 6 of the Civil Procedure Rules and all other enabling provisions of the law)

TAKE NOTICE that this honourable court will be moved on the day of2020 at 9.00 o'clock in the forenoon or soon thereafter as counsel for the appellant/applicant shall move the court on an application for orders:

1. That this application be certified urgent and be heard ex-parte in the first instance on account of its urgency.
2. That this honourable court be pleased to grant an order of temporary injunction restraining the 1st respondent by himself, her agents, employees, servants, assigns and/or any person acting on her behest or behalf from wasting, damaging, alienation, sale, removal and/or demolishing or in any other way developing Plot .202/Non Christined Plot No. 3 Block 11/343 Meru Municipality pending the hearing interpartes of this application or pending further order of this court.
3. That this honourable court be pleased to grant an order of temporary injunction restraining the 1st respondent by herself, her agents, employees, servants, assigns and/or any person acting on her behest or behalf from wasting, damaging, alienation, sale, removal and/or demolishing or in any other way developing Plot T.202/Non Christined Plot No. 3 Block 11/343 Meru Municipality pending the hearing and determination of Nyeri Civil Appeal No. 23 of 2017 in the court of Appeal.
4. That this court be pleased to grant any further or better relief in the interest of justice.
5. That costs of this application be borne by the 1st respondent.

2. The application has the following grounds:

- a. That applicant is aggrieved by the judgment of this court delivered on 27th June, 2017 and has filed an appeal thereto in the court of appeal being Nyeri Court of Appeal Civil Appeal No. 23 of 2017.

b. That the respondent has while the appeal is pending for hearing and determination began to alter the developments on the suit land. She has driven a bull dozer on the site and in the verge of demolishing the applicant's residential house, the trees thereon have been cut in preparation to destroy the applicant's house.

c. That this application is preferred in the interests of Justice and to prevent the applicant from suffering substantial loss.

d. That the 1st respondent unless estopped by an order of this court shall occasion irreparable loss to the applicant.

e. That it is fair, just and equitable that this application is granted.

3. The application is buttressed by the affidavit of the applicant sworn on **8th December, 2020** which states:

I, UMESH MUNENE of C/O P.O. Box 1568-60200, Meru do hereby make oath and state as follows:

1. That I am the applicant herein well versed with the facts of this matter and therefore competent to make and swear this affidavit.

2. That I have preferred an appeal against the decision of this court of 27th June, 2017, hereto annexed is a copy of the 1st page of the record of appeal and the attendant memorandum of appeal in Nyeri Civil Appeal Case No. 23 of 2017 (Annexed hereto and marked as UM-1 & 2 respectively).

3. That I have been waiting for my appeal to be heard having satisfied all required preliminaries.

4. That on the suit land lies my residential house and other developments to (sic) include mature gravelia and murunga trees.

5. That most recently on 23rd November, 2020, the 1st respondent and her agents/servants began felling trees on the suit land.

6. That the 1st respondent has gone further to drive a bull dozer on the suit land and plans are in high gear to demolish my house on the suit land. I have been able to take photographs of the wanton destruction on the site. (Annexed hereto and marked UM-3 is bundle of photos showing the position.

6. That the 1st respondent is taking advantage of the delay in the hearing and determination of the appeal to move on site and destroy what she has not labored for.

7. That I seek an injunction as I await the hearing of my appeal in the court of appeal which appeal has overwhelming chances of success.

8. That the 1st respondent if not estopped shall deal with the suit land and alter it to my detriment and loss.

9. That I attach sentimental value to my house thereon. Demolition shall occasion me irreparable damage.

10. That what is deponed herein is true to the best of my knowledge and belief, sources of information whereof have been disclosed.

4. Upon careful consideration of the application, I note that the effect of the prayers sought in the application is to stay the execution of a judgment delivered on 26th January, 2001, almost twenty years ago, in the Chief Magistrate's Court at Meru. The said judgment was upheld on appeal by the Hon. E.C. Cheronu, ELC Judge, sitting at Meru on **27th June, 2017**, over three years ago.

5. Order 42 Rule 6 of the Civil Procedure Rules mandatorily requires that for a court to order a stay of execution, security for the due performance of the impugned decree should be availed. There is no intimation in the application that such security is offered. I, however, opine that security is only one of the issues the court considers before exercising its discretion to grant or not to grant a stay of execution.

6. I find it necessary to refer this application to the Hon. Lady Justice Lucy Mbugua, ELC Judge at Meru, for its hearing and determination.

7. I issue the following orders:

a. The applicant should properly serve this application upon the respondents within 14 days of today.

b. The application will be heard interpartes by the ELC Judge at Meru on **26th January, 2021**.

c. Costs shall be in the eventual cause.

Delivered in chambers at Chuka this 15th day of December, 2020 in the presence of:

CA: Ndegwa

Applicant's advocates to obtain ruling at Meru Law Courts.

P. M. NJORGE,

JUDGE.