



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CASE NO 99 OF 2017

FORMERLY MERU HCC NO. 73 OF 2006

EMILIO MARANGU M'NDIIRI.....PLAINTIFF

VERSUS

ANJERO MUNENE MARINDI.....1ST DEFENDANT

LAWRENCE ANTONY KINYUA.....2ND DEFENDANT

FAITH NKINGA KABUCHA.....3RD DEFENDANT

ERICK GITONGA MBAKA.....4TH DEFENDANT

EVANGLINE MAKENA MITAMBO.....5TH DEFENDANT

RULING

1. This application is dated **10th January, 2019** and seeks orders:

1. That this application be certified urgent and the same be heard on priority basis and the court do issue orders in terms of prayer 2 on exparte basis.
2. That pending the hearing and determination interpartes of the instant application the court be pleased to stay the execution of this court judgment delivered on 13th December, 2018.
3. That pending the hearing and determination of the intended appeal herewith the court be pleased to stay the execution of its judgment delivered and dated 13th December, 2018.
4. Costs of this application be provided for.

2. The application is supported by the applicant's affidavit sworn on 10th January, 2019 and has the following grounds:

- a) That the judgment in this case (OS) was delivered by this court on 13th December, 2018 in favour of the defendant/respondents.
- b) That the general import of the judgment was that the applicant had lost the suit and the applicant was ordered to vacate the suit land.
- c) That the applicant have been in occupation of the suit lands since 1967 therefore unless the applicant is given enough time it is very difficult for the applicant to give vacant possession of the suit lands with immediate effect.
- d) That the applicant children equally have been residing on the suit lands and all their life time properties are on the suit lands and they also require time to give vacant possession of the suit lands.
- e) That the applicant was not satisfied with the finding and holding of the court (judgment) and the applicant has already filed notice

of appeal.

f) That if the applicant now demolishes the houses on the suit lands and all other property belonging to the applicant the applicant and the entire household stand to suffer irreparable loss in the event that the applicant wins the appeal.

g) That the applicant has a strong and arguable appeal hence he needs to give the applicant and his household a chance to be heard by court of appeal before having to move from the suit land forthwith by staying execution of the judgment.

h) That maintaining the status quo as it has been for all this time until the intended appeal is heard and determined will not prejudice the respondent.

i) That if the stay is not granted the applicants intended appeal will be rendered nugatory.

j) That the prayers sought are the best and the most apt in the circumstances.

3. At the exparte stage hearing on 16th January, 2019, the applicant told the court that he sought an order for stay of execution in terms of prayer 2 pending hearing and determination of the application.

4. I have perused the application and also considered the oral submissions made by the applicant. I issue the following orders:

a. Prayer 2 in the application is allowed subject to the applicant depositing with court a sum of Ksh. One Million (1,000,000/=) as security within the next 21 days failing which the order of stay granted herein will automatically lapse.

b. The applicant is ordered to serve the orders issued by this court today upon the defendants/respondents within 14 days of today.

c. The application will be heard interpartes on **27th March, 2019**

5. Costs shall be in the cause.

6. It is so ordered.

Delivered in open Court at Chuka this 16th day of January, 2019 in the presence of:

CA: Ndegwa

Emilio Marangu M'Ndiiri - applicant

P.M. NJOROGÉ

JUDGE