



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT CHUKA**

**CHUKA ELC CASE NO. 99 OF 2017**

**FORMERLY MERU ELC 73 OF 2006**

**EMILIO MARANGU M'NDIIRI.....PLAINTIFF**

**VERSUS**

**ANJERO MUNENE MARINDI.....1<sup>ST</sup> DEFENDANT**

**LAWRENCE ANTONY KINYUA.....2<sup>ND</sup> DEFENDANT**

**FAITH N KINGA KABUCHA.....3<sup>RD</sup> DEFENDANT**

**ERIC GITONGA MBAKA.....4<sup>TH</sup> DEFENDANT**

**EVANGELINE MAKENA MITAMBO.....5<sup>TH</sup> DEFENDANT**

**RULING**

1. There are 2 applications in this matter. The 1<sup>st</sup> one is dated 10<sup>th</sup> January, 2019. It seeks stay of execution of this Court's Judgment delivered on 13<sup>th</sup> December, 2018. Exparte orders were given pending hearing and determination. The applicant was ordered to deposit with court a sum of Kshs.1,000,000/= as security and to also serve the orders issued by the court upon the defendants.
2. It is quite clear that the plaintiff did not deposit the required security with court within the stipulated time. It is also quite clear that he never served the defendants with the apposite orders as directed by the court.
3. The 2<sup>nd</sup> application seeks to have the firm of Ndorongo & Co. Advocates come on record in place of the firm of Mwenda Mwarania Akwalu & Co. Advocates. It also seeks a review of the ruling delivered by the court on 16<sup>th</sup> January, 2019.
4. Miss Njenga, the defendants' advocate told the court that she was never served with the application dated **10<sup>th</sup> January, 2019**. She went on to tell the court that she had come to court ready to prosecute the application dated **4<sup>th</sup> February, 2019**. She asked the court to dismiss both applications.
5. The applicant did not say anything in support of his application except for nebulously stating that his advocate was unavailable.
6. Regarding the firm of Ndorongo & Co. Advocates coming on record instead of the firm of Mwenda Mwarania Akwalu & Co, this court has no objection although in view of this ruling, the new firm of advocates will prosecute the plaintiff's case at the Court of Appeal.
7. Order 42 Rule 6 mandatorily requires the depositing of security if a stay of execution is allowed. In this case, conditional stay was granted and security was not deposited within the stipulated time. Having perused the application dated 4<sup>th</sup> February, 2019 and its supporting affidavit, I am not persuaded that prayers 3 and 4 thereof are merited. Those prayers are denied.
8. It is ordered as follows:
  - a) The application dated 10<sup>th</sup> January, 2019 is hereby dismissed with no order as to costs in view of the fact that the defendants never participated in its prosecution.
  - b) Except for prayer 2 in the application dated 4<sup>th</sup> February, 2019, which prayer is allowed, prayers 3, 4 and 5 thereof are dismissed

and costs are awarded to the defendants.

**Delivered in open Court at Chuka this 27<sup>th</sup> day of March, 2019** in the presence of:

CA: Ndegwa

Kathungu h/b Miss Ndorongo for the Applicant

Lawrence Antony Kinyua – 2<sup>nd</sup> Defendant

Faith Nkinga Kabucha – 3<sup>rd</sup> Defendant

**P. M. NJORGE**

**JUDGE.**