



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT MERU

ELC APPEAL NO. 66 OF 2018

FRANCIS MUKUNJA (Suing as the legal representative of the estate of MIRITI KIABURI alias M'MIRITI KIABURE alias STEPHEN MIRITI DECEASED)

VERSUS

M'RUNGENTO MBOGORI1ST RESPONDENT

JOSEPH KITHINJI KAUGI2ND RESPONDENT

RULING

1. By a notice of motion dated 20.12.2018, the applicant/appellant is seeking orders for stay of execution of the judgment /decree and all the consequential orders in Meru Chief Magistrate Civil case No. 49 of 2013 made on 20.12.2018 pending hearing and determination of this application inter-partes and pending the appeal.
2. The grounds in support of the application are that the ruling in Meru Chief Magistrate Civil case no. 49 of 2013 was entered against the appellant on 20.12.2018 dismissing his application dated 27.3.2017 and the respondent is threatening to execute the said ruling against the appellant which will render him homeless and the appeal nugatory if orders are not granted.
3. It is further contended that unless the orders sought herein for stay of execution of the said ruling are issued, the appellant shall suffer irreparable loss and damages and condemned unheard.
4. Applicant has also filed a supporting affidavit on 21.12.2018 where he has deponed inter alia that the suit property is family land where he and his family members have called home since childhood.
5. The application is opposed via a replying affidavit of the 1st respondent (M'Rugento) filed on 21.2.2019 where he has deponed that the appellants suit in Meru CMCC no. 49 of 2013 was dismissed on 30th August, 2017, while the application dated 12th October 018 for reinstatement of the foresaid suit was dismissed on 20th December 2018. He therefore contends that there is nothing to be stayed as regards the aforesaid order for dismissal of the suit and ruling dated 20th December 2018.
6. He argued that him and 2nd respondent had not filed any counter claim and no orders of eviction were given, hence, there is nothing to stay as regards the aforesaid orders/rulings.
7. The application came up for hearing on 5.3.2019, where by counsel for applicant and the one for 1st respondent urged the court to give a ruling.
8. I have perused the record so far availed. What is apparent is that applicants' suit before the trial court, CMCC no. 49/13 was dismissed on 30.8.2017. Efforts to reinstate the same were futile as the application for reinstatement was dismissed on 20.12.2018.
9. If the lower court suit was dismissed, what is there to be stayed? Nothing!. The applicant should pursue his appeal with speed less it befalls the same fate as his suit in the lower court.
10. The application dated 20.12.2018 is hereby dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 25TH DAY OF APRIL, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Ashaba holding brief for Kiogora Mugambi for applicant

J.G Gitonga for 1st respondent

HON. LUCY. N. MBUGUA

ELC JUDGE