



**REPUBLIC OF KENYA**

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

**MERU ELC APPEAL CASE NO. 55 OF 2019**

**TITUS MITHIKA GICHUNGE.....APPELLANT/APPLICANT**

**VERSUS**

**CYPRIAN KABERIA M'IBUTU.....RESPONDENT**

**RULING**

1. This application is dated **9<sup>th</sup> April, 2019** and seeks orders:

1. That this honourable court be pleased to certify this application as urgent and dispense with service in the first instance.
2. That this honourable court be pleased to grant an order of stay of execution in respect to **CMCC 123 of 2014** pending the hearing and determination of this application.
3. That this honourable court be pleased to grant an order of **stay of execution** in respect to **CMCC 123 of 2014** pending the hearing and determination of this appeal.
4. That this honourable court be pleased to make any further orders in the interest of justice pending the hearing and determination of this appeal.

2. The application is supported by the applicant's affidavit sworn on **9.4.2019** AND has the following grounds:

1. That the learned magistrate erred in law and facts by ignoring that the transfer was fraudulent as the same was not executed by the applicant's deceased father one Victoriano Gichunge.
2. That the suit land is family land and the appellant together with his mother and siblings have been in occupation of the land since the year 1978.
3. That the appellant is apprehensive that the respondent is likely to proceed with execution while this appeal is pending.
4. That the appellant shall suffer substantial loss as he will be evicted together with his mother and siblings from their family land.
5. That this appeal shall be rendered nugatory if the respondent proceeds with execution because the appellant will be evicted together with his mother and siblings from the family land.
6. That this application has been made without unreasonable and/or undue delay.

3. The apposite file was sent to Chuka via EMS. I have perused the application and I issue the following orders:-

- a. The application is not certified urgent in view of the absence of the applicant and/or his advocate.
- b. The application will be heard on priority basis.
- c. Conditional stay of execution is granted for 30 days provided that the applicant will deposit with court a sum of Kshs.500,000/= within the next 14 days **AND IT IS HEREBY CLARIFIED** that this order will stand automatically spent on 13<sup>th</sup> May, 2019 **UNLESS** it will be further extended and/or howsoever varied by the Hon. Lady Justice Lucy Mbugua, J, the ELC Judge at Meru.

d. The applicant to properly serve the application upon the respondent within 10 days of today.

e. Directions will be taken before the ELC Judge at Meru on **13<sup>th</sup> May, 2019**

4. Costs shall be in the cause.

**Delivered at Chuka this 10<sup>th</sup> day of April, 2019 in the presence of:**

CA: Ann

**P. M .NJOROGI,**

**JUDGE.**