



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 188 OF 2017

FORMERLY MERU ELC. 226 OF 2013

MUTIRIA KARUMBAI MACWA.....PLAINTIFF

VERSUS

JAMES NJAGI MAKEMBO.....1ST DEFENDANT

THE COUNTY COMMISSIONER

THARAKA SOUTH SUB COUNTY.....2ND DEFENDANT

THE CHIEF LAND REGISTRAR.....3RD DEFENDANT

THE HON. ATTORNEY GENERAL.....4TH DEFENDANT

RULING

1. This application is dated **12th March, 2018** and seeks the following orders:-

1. That the application be certified urgent in the first instance.
2. That the honourable court be pleased to stay execution herein pending the hearing and determination of the application.
3. That the honourable court be pleased to stay execution herein pending hearing and determination of the appeal so lodged.
4. That the costs be provided for.

2. It has the following grounds:-

- a) That the defendant/respondent has issued a letter to the plaintiff/applicant notifying him of eviction from the parcel of land.
- b) That unless stay is granted the applicant's appeal stands to be rendered nugatory.
- c) That the plaintiff/applicant is ready and willing to furnish a suitable security as may be ordered by the court.

3. The application is supported by the affidavit of Mutiria Karumbai Machwa which states:-

I, Mutiria Karumbai Machwa of C/O P. O. Box 3030-60200 Meru do hereby make oath and state as follows:-

1. That I am adult male of sound mind the plaintiff/applicant herein familiar with facts herein thus competent to make and swear the affidavit.
2. That the court delivered a judgment on 28th November, 2018, which the plaintiff/applicant was aggrieved.
3. That plaintiff/applicant dissatisfied with the judgment and entire decision has interested the advocate to lodge an appeal in court of appeal.

4. That I am advised by my advocate that the appeal will be lodged as notice of appeal.
5. That I am advised by my counsel on record which counsel I verily believe to be true that the appeal is arguable and has high chances of success.
6. That the court misdirected (sic) himself in law and fact and delivered a judgment against the weight of evidence.
7. That unless the stay is granted pending the hearing and determination of the appeal filed (sic) herein in the said appeal stands to be rendered nugatory.
8. That I am willing and ready to furnish a suitable security should the same be ordered by the court.
9. That in the event the decision in terms of the decree is executed the defendant stand (sic) to suffer irreparable loss harm and consequential damage as he will be rendered homeless.
10. That the application is brought with utmost urgency and without delay.
11. That the chances of success of the appeal is very high as the court has rendered a judgment to effect that parties do share the defendant/applicant parcel of land.
12. That the defendant/respondent has served me with a demand notice threatening to evict me from the parcel of land.
13. That what is deponed to herein above is true to the best of my knowledge, information and belief.

4. The respondents have opposed the application through Grounds of Opposition dated **1st April, 2019** which state:

GROUND OF OPPOSITION TO THE MOTION DATED 12.3.2019

1. That orders issued by this honourable court in its judgment delivered on the 19.12.2018 are not capable of being stayed.
2. The application is brought under the wrong provisions of law.
3. The applicant does not offer any security for due performance of the judgment.
4. That no appeal has been preferred by the applicant.
5. That the application is brought after undue delay and without any explanation.

5. Mr. Mwenda noted that the applicant and his advocate were not in court. He asked the court to rely on his grounds of opposition and dismiss the application. Mr Kiongo, Senior State Counsel, for the Attorney General, supported Mr. Mwenda's position.

6. Having considered the submissions made by Mr. Mwenda and Mr Kiongo, I find that this application merits dismissal. I do note that today's hearing date was fixed at Meru at the instance of the applicant by Hon. Lady Justice Mbugua, Judge, on 19th March, 2019. Therefore, the applicant and his counsel, have no excuse not to have to come to court for interpartes hearing of this application. I also note that no Notice of Appeal was filed within the stipulated time.

7. In the circumstances, this application is hereby dismissed.

8. Costs are awarded to the 1st defendant.

9. It is so ordered.

Delivered in open Court at Chuka this **1st day of April, 2019** in the presence of:

CA: Ndegwa

Murnago Mwenda for 1st defendant/respondent

Kiongo for 2nd to 3rd defendants/respondents

P. M. NJORGE,

JUDGE.