



**Said & 6 others v Ibutu (Environmental and Land Originating Summons
121 of 2009) [2019] KEELC 5100 (KLR) (15 May 2019) (Ruling)**

Rashid Said & 6 others v Stephen Kimonye Ibutu [2019] eKLR

Neutral citation: [2019] KEELC 5100 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 121 OF 2009**

LN MBUGUA, J

MAY 15, 2019

BETWEEN

**RASHID SAID 1ST PLAINTIFF
JANE KANINI SAID 2ND PLAINTIFF
IBRAHIM SAID 3RD PLAINTIFF
JOHN COLUMBUS GIKUNDA 4TH PLAINTIFF
REHEMA BILALI 5TH PLAINTIFF
ABDAH AH MURIUNGI 6TH PLAINTIFF
AMIN BILALI 7TH PLAINTIFF**

AND

STEPHEN KIMONYE IBUTU DEFENDANT

RULING

1. By a notice of motion filed on 26.2.2019 the applicant/defendant seeks orders of stay of execution of the judgment in MERU ELC CASE No. 121 of 2009 (OS) delivered by this court on 31.10.2018 and all consequential orders pending the hearing and determination of the application and the intended appeal and that costs be provided for.
2. The grounds in support of this application are that the Judgment delivered on 31.10.2018 was in favour of the respondents/plaintiffs herein whose effect is that land registration NO. Nkuene/Mitunguu/180 is to be registered in the names of the plaintiffs/respondents and that the respondents are in process of implementing the terms of the said Judgment.



3. Applicant has also sworn a supporting affidavit where he avers that he stands to suffer monumental loss and damages unless orders of stay of execution are granted.
4. The application is opposed by the replying affidavit of one John Columbus Gikunda who avers that the plaintiffs will be prejudiced by the prayers sought in the application. He also avers that this matter has been in court since 2009.
5. The provisions of order 42 rule 6 (2) provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless—

 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.
6. An Applicant who comes to court under the aforementioned rule is required to demonstrate that he stands to suffer substantial loss and that the application has been made without delay. He also ought to offer security. Judgment herein was delivered on 31.10.2018 while the application for stay was filed on 26.2.2019. No reasonable explanation has been advanced as to why this application was made four months after date of delivery of judgment.
7. Applicant has also not demonstrated the monumental loss and damage that he stands to suffer. After all it is the plaintiffs who are in occupation of the suit land going by the Judgment of this court.
8. I therefore find that the application is unmerited. The same is dismissed with costs to respondents.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS DAY OF 15TH MAY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Munga holding brief for M. Kariuki for plaintiffs

Defendant/applicant

1st, 3rd, 4th, 6th plaintiffs

HON. LUCY. N. MBUGUA

ELC JUDGE

