

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL 55 OF 2019

TITUS MITHIKA GICHUNGE.....APPELLANT/APPLICANT

VERSUS

CYPRIAN KABERIA M'IBUTU.....RESPONDENT

INTERIM RULING

1. A judgment was delivered in Maua CMCC No. 123/2014 on 28.2.2018 which triggered the present proceedings. Defendant was dissatisfied with the said judgment and he therefore filed a memorandum of appeal along with an application for stay of the judgment dated 9.4.2019. The application for stay of execution was presented before Judge P.M. Njoroge of Chuka ELC on 10.4.2019 whereby, the application was allowed on temporary basis on condition that applicant was to deposit shs.500,000 within 14 days failure to which the order was to automatically stand as spent by 13.5.2019 unless extended or varied by this court. The conditional stay was also to last for 30 days.
2. The applicant did not comply with the orders given by Judge P.M. Njoroge necessitating the filing of another application on 10.5.2018 seeking the variation of the orders of 10.4.2019.
3. Both application dated 9.4.2019 and the one dated 8.5.2019 are scheduled for hearing on 10.7.2019.
4. Applicant's counsel has sought for extension of the stay orders in the intervening period which application was hotly contested. The respondent avers that he is the one on the suit land, an averment captured in his replying affidavit. Applicant also says that he is the one on the suit land. I do recall vividly that the issue as to who is on the suit land is hotly contested. The parties were in court when the matter was called out and each litigant was claiming to be the one using the suit land.
5. Counsel for respondent avers that when judgment was delivered on 28.2.2018 a stay of 30 days was granted where by at the lapse of the 30 days, respondent moved into the land.
6. This court with the agreement of counsels for both parties has already given directions for the Executive Officer of this court to visit the scene and establish who is in occupation and use of the suit land. I believe the report of the scene visit will give a clearer picture as to who is on the ground.
7. As at now a stay order may elicit ambiguity as a question does arise as to whether the situation on the ground did change after the lapse of the 30 days from the time Judgment was delivered.
8. I decline to grant or extend any interim orders as at now.

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

C/A: Kananu

Mbaabu for appellant

Muriuki for respondent

Applicant

HON. LUCY. N. MBUGUA

ELC JUDGE