

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 30 OF 2016

HUMPHREY MUGO KABUTE.....PLAINTIFF

VERSUS

SUSAN GATUNDO MURAGE.....1ST DEFENDANT

JONAH MUNENE MURAGE.....2ND DEFENDANT

JEMIMAH GITHIGA.....3RD DEFENDANT

REBECCA MUTHONI KIMUNYI.....4TH DEFENDANT

ZIPPORAH WAMARWA.....5TH DEFENDANT

RULING

The Applicant in the Notice of Motion application dated 1st February 2019 brought under **Section 3A CPA** is seeking an order to lift the prohibitory order lodged on land parcel No. MUTIRA/KATHARE/273. The applicant is also seeking costs of the application. In her affidavit in support of the said application, the Applicant deponed that this case has already been finalized and judgment entered in her favour. She further deponed that during the pendency of the case, the Respondent/Plaintiff had lodged a prohibitory order on the suit land parcel No. MUTIRA/KATHARE/273 pending determination. After the case was determined, the decree of the Court cannot be enforced unless the prohibitory order is lifted. In a replying affidavit sworn on 18th March 2019, the Plaintiff/Respondent opposed the said application arguing that though this case was struck out, he has appealed against the said decision and that this Honourable Court has a duty to balance the right of Applicants against his rights to move to a more superior Court. He stated that typed proceedings has been availed to him and that within another two (2) weeks, he will have prepared the record of appeal. He stated that he has a good appeal with chances of success.

I have considered the application, the supporting affidavit and the applicable law. The plaintiff in this case lost this suit when the suit was struck out on 6th October 2017. Once a determination has been rendered in a dispute before a competent Court of law, the inevitable consequence of execution shall follow unless a stay order is granted. In this case, no application for stay was made and granted under **Order 42 Rule 6 CPR**. An application for stay under the said provisions of the law will enable the parties to present their arguments, both in support and in opposition to the grant of the stay orders. The grounds under which prohibition orders were issued are not known in an open democracy. Such grounds are not founded under the rules of procedure applicable in civil cases. The Respondent cannot therefore use the prohibitory order lodged during the pendency of this suit as a ground for stay pending appeal.

I find the application dated 1st February 2019 well founded and the same is allowed as prayed. The Plaintiff/Respondent shall bear the costs of this application. It is so ordered.

READ, DELIVERED and SIGNED in open Court this 14th day of June, 2019.

E.C. CHERONO

ELC JUDGE

14TH JUNE, 2019

In the presence of:

- 1. M/S Nyangati holding brief for Maina Kagio for Plaintiff/Respondent*
- 2. Susan Gatundo Murage, Jonah Munene Murage, Jemimah Githiga and Zipporah Wamalwa*
- 3. Court clerk – Mbogo*