



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

MERU ELC APPEAL CASE NO. 78 OF 2019

PETER KAIMBIAPPELLANT

VERSUS

GEDION M'ITHIMA.....1ST RESPONDENT

JOHN KIOGORA MUGAMBI.....2ND RESPONDENT

MORRIS KIRUJA ITHIMA.....3RD RESPONDENT

RULING

1. This application has been brought to court pursuant to Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules, sections 1A, 1B and 3A of the Civil Procedure Act and any other enabling provisions of the law.

2. The application is dated 11th June, 2019 and seeks the following orders: -

1. That the honourable court be pleased to certify this application urgent and proceed to hear the same exparte in the first instance and appropriate orders be issued accordingly.

2. That this honourable court be pleased to issue a temporary order for stay of execution of the judgment and/or decree in Nkubu PM ELC Case No. 39 of 2017 Gedion M'Ithima & Anor –v- Morris Kiruja & Anor pending the hearing and determination of this application inter partes and thereafter as the court shall order.

3. That this honourable court be pleased to issue an order for stay of execution of the judgment and/or decree in Nkubu P.M ELC Case No. 39 of 2017 Gedion M'Ithima & Anor –v- Morris Kiruja & Anor pending the hearing and determination of this appeal.

4. That costs of this application be provided for.

3. The application has the following grounds:

a. The appellant/applicant was aggrieved by the decision and judgment of the learned magistrate in Nkubu P.M. ELC Case No. 39 of 2017 Gedion M'Ithima & Anor –v- Morris Kiruja & Anor hence the instant appeal.

b. The appeal herein is well grounded and has got very high chances of success but the same will be rendered nugatory unless an order for stay of execution of the judgment and/or decree of the lower court is made forthwith.

c. The lower court judgment was to the effect inter alia that the appellant's title deed and entries in the register be cancelled by the Land Registrar with immediate effect hence the appellant/applicant being apprehensive that if the above happens, then the whole substratum of this appeal will have been lost.

d. The appellant/applicant is ready, able and willing to provide any security as the court orders for the due performance of the decree or order that may be passed against the appellant/applicant at the conclusion of the appeal.

e. The appellant/applicant stands to suffer substantial loss unless the order is made.

f. This application has been brought to court without undue delay and has been made in utmost good faith and the prayers being sought for, if granted, will not in any way prejudice the respondent's case, if any.

4. The application is supported by the affidavit of Peter Kiambi Manyara, the applicant, which states as follows:

I, PETER KAIMBI MANYARA, of C/O P. O. Box 579-60200 MERU within the Republic of Kenya do hereby make oath and solemnly state as follows:

1. That I am an adult of sound and disposing mind and the appellant/applicant herein thus competent to make and swear this affidavit.
2. That I am the 2nd defendant in Nkubu P.M ELC Case NO. 39 of 2017 Gedion M'Ithima & Anor –vs- Morris Kiruja & Anor.
3. That I am also the registered owner of P/No. Nkuene/L-Mikumbune/1760 which formed the subject matter and was the suit land in Nkubu P.M. ELC Case No. 39 of 2017
4. That the lower court proceeded to deliver its judgment in the matter on 15.5.2019. Annexed herewith and marked "PKM1" is a copy of the judgment.
5. That further, the proceedings in the matter are ready the same having been typed. Annexed herewith and marked "PKM2" is a copy of the proceedings.
6. That the honourable magistrate made and delivered her judgment inter alia cancelling my title to the suit land and ordering that the same be registered in the name of the 1st plaintiff/1st respondent with immediate effect.
7. That I am greatly dissatisfied with the said decision and judgment of the court hence my appeal herein.
8. That as it can be noted from my Memorandum of Appeal, my appeal is well grounded and has high chances of success, and the same will be rendered nugatory unless an order for stay of execution of the judgment and decree therein is made.
9. That given that my title to the suit land stands to be cancelled with immediate effect, I am apprehensive that if the above happens, then the whole substratum of this appeal will have been lost.
10. That I am ready to immediately canvass the appeal given that the lower court's proceedings and judgment have been typed hence I am not opposed to the preservation of the status quo pending the hearing and determination of my appeal.
11. That I am also ready to abide by any security ordered by court for the due performance of the decree or order that may be passed against me at the conclusion of the appeal.
12. That this application has been brought without undue delay and the orders being sought, if granted will not prejudice the respondents' case, if any.
13. That what is deponed to herein above is true to the best of my knowledge, information and belief.

5. At the ex parte hearing of the application, Mr. Edwin Kimathi, the applicant's advocate, urged the court to allow prayer 2 in the application as the substratum of the suit risked being lost should the prayer not be granted thus making the applicant to suffer substantial loss.

6. I have perused the applicant's pleadings. I do note that he is willing to provide necessary security as may be ordered by the court.

7. I issue the following orders:

- a. This matter is NOT certified urgent BUT will be heard on priority basis.
- b. Prayer 2 in the application is granted pending hearing and determination of the application SUBJECT to the applicant depositing as security with the ELC Court at Meru the sum of Kshs. Three Hundred Thousand (Kshs.300,000/=) within the next 21 days FAILING WHICH the grant of stay of execution granted herein will automatically lapse.
- c. Prayer (b) above is granted in consonance with the provisions of section 63 of the Civil Procedure Act.
- d. The applicant is directed to properly serve this application upon the respondents within 7 days of today.
- e. The parties are directed to appear before Hon. Lady Justice Lucy Mbugua or any other ELC Judge at Meru for hearing of the application or for apposite directions on 30th July, 2019 at 9.00am.
- f. Costs of this application at the ex parte stage will be in the cause.

Delivered in open Court at Chuka this 13th day of June, 2019 in the presence of:

CA: Ndegwa

Edwin Kimathi for the Applicant

P. M. NJORGE,

JUDGE.