



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MURANG'A**

**ELCA NO. 2 OF 2019**

**JOHN GACHUNGA NJOROGE.....APPELLANT**

**VERSUS**

**JOSEPH NJOROGE MWANGI.....RESPONDENT**

**RULING**

1. This Application is expressed to be brought under Order 22, 51 Rule 1 of the Civil Procedure Rules and sections 1A, B and 3 of the Civil Procedure Act. The Applicant is seeking orders as;

a. Spent

b. That this Honourable Court be pleased to issue an order of stay of the orders issued on 27th September 2018 by the Principal Magistrate's Court, Kigumo in PMCC No.24 of 2010 pending hearing and determination of this application

c. That this Honourable Court be pleased to issue an order of stay of the orders issued on 27th September 2018 by the Principal Magistrate's Court, Kigumo in PMCC No.24 of 2010 pending the hearing and determination of the appeal

d. That costs of this application be provided for.

2. The application is based on the following grounds that; -

a. That the Appellant is dissatisfied with the ruling and order of Honourable trial magistrate

b. That the Appellant has filed an appeal against the said ruling order

c. That unless this Court intervenes the Appellant shall be heavily prejudiced

d. That it is in the interest of justice and fairness that the orders sought herein are granted.

3. The Applicant states that he is dissatisfied with the ruling and orders of the Court and states that he has a good defence to the Notice to show cause. That the costs he is being compelled to pay is higher than the decretal sum which sum he has already settled in full.

4. The application is opposed by the Respondent. The application is stated to be an abuse of the Court process as another had been filed in the lower Court. The only outstanding issue is the costs and interests as the decretal amount was settled.

5. Parties canvassed the application through oral submissions which I have considered.

a) Stay of execution is an equitable relief, which is exercised at the discretion of the Court. Like all discretionary reliefs, it must be exercised judiciously and upon the confines of the law. It must not be extensively callous or whimsical. For one to succeed in an application for stay of execution, the following must be satisfied, that: -

(a) The application was brought without delay;

(b) Substantial loss may result to the Applicant unless the stay is granted; and

(c) Security for the due performance of the order or decree has been provided.

6. According to the record the ruling complained about was issued on the 27/9/18. The Notice of Motion was filed on 16/11/18 and therefore timeously.

7. The Applicant has explained that the costs being compelled to pay are higher than the decretal amount which he has already settled in full and is not in contention. He also risks losing his personal liberty if the warrant of arrests issued against him is executed. The Court is satisfied that the Applicant has demonstrated substantial loss.

8. In respect to security for the costs, this Court is directing the Applicant to file and serve an appropriate undertaking, to be approved by the Respondent, to cater for the costs and all incidentals in this case within the next 15 days, in default the orders granted herein shall lapse without any further orders.

9. The application is allowed.

10. Costs of the application are in favour of the Respondent.

**Orders accordingly**

**DELIVERED, DATED AND SIGNED AT MURANG'A THIS 22<sup>ND</sup> DAY OF JULY 2019**

**J.G. KEMEI**

**JUDGE**

**Delivered in open Court in the presence of:**

Ms Mukiri HB for Gachomo for the Appellant/Respondent

T M Njoroge for the Respondent/Applicant

Irene and Njeri, Court Assistants