



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO. 03 OF 2018

IN THE MATTER OF CHAPTER 4V THE BILL OF RIGHTS OF THE CONSTITUTION OF KENYA 2010

**IN THE MATTER OF ALLEGED CONTRAVENTIONS OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE
20, 21, 22, 23, 40 AND 47 OF THE CONSTITUTION OF KENYA 2010**

BETWEEN

OBADIAH MURUJA MUGENDI.....PETITIONER

VERSUS

CHARLES KABITI JAPHET.....1ST RESPONDENT

MERU SOUTH/MAARA LANDS ADJUDICATION OFFICER.....2ND RESPONDENT

THE DISTRICT LAND REGISTRAR MERU SOUTH.....3RD RESPONDENT

HON. ATTORNEY GENERAL.....4TH RESPONDENT

RULING

1. This Notice of Motion application dated 1.10.2019 states that it has been brought to court under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A, 6 and 63(c) of the Civil Procedure Act and all other enabling provisions of the law. The application seeks the following orders:-

1. This application be certified urgent and heard ex-parte in the first instance.
2. This honourable court be pleased to stay execution of its judgment dated the 29th day of May, 2019 pending appeal.
3. This honourable court be pleased to order status quo be maintained in respect of LR. No. Muthambi/Kandungu/1636 pending appeal.
4. Costs of this application be in course.

2. The application has the following grounds:

1. The Petitioner/Applicant intends to file an appeal against the judgment of this honourable court dated the 29th day of May, 2019.
2. That unless the orders sought herein are granted, the 1st Respondent may dispose of the suit premises rendering the applicant's appeal nugatory.
3. The Respondent will not suffer any prejudice if the orders sought herein are granted.

3. The application is supported by the affidavit of the applicant sworn on **1st October, 2019**, which states as follows:

I OBADIAH MURUJA MUGENDI, of P. O. Box 310-60401, Chogoria do hereby make oath and state as follows:

1. That I am the petitioner/applicant herein hence competent to make and swear this affidavit.
2. That on the 29th day of May, 2019 this honourable court delivered a judgment in favour of the respondents herein.
3. That being dissatisfied with the said judgment, I intend to appeal the same in the Court of Appeal at Nyeri.
4. That immediately after the honourable court delivered the said judgment, I applied for copies of the proceedings and judgment and the same were availed to me on the 14th day of August, 2019.
5. That the 1st Respondent herein has now started bringing potential buyers to the suit land for purposes of disposing the same an act that will render my appeal nugatory.
6. That I am ready and willing to abide to the conditions that will be set by this honourable court for the grant of the orders sought herein.
7. That I also pray that the honourable court do grant me stay of execution of its judgment dated the 29th day of May, 2019 and order status quo be maintained in the interest of justice.
8. That what is deponed to hereinabove is true to the best of my knowledge, information and belief.

4. When the application was slated for hearing on 15th October, 2019, only the applicant was in court. The respondents were not in court. There was no evidence whatsoever that the 1st Respondent had been served with that day's hearing date.

5. The applicant told the court that he had heard rumours that the 1st Respondent was planning to auction his property. He asked the court to stop the intended auction of this property.

6. Judgment in this case was delivered on 29th May, 2019. The court's record shows that on the same day the applicant applied for a certified copy of the apposite judgment. This was supplied to him on the same day. On 14th June, 2019, the proceedings in the suit were supplied to him.

7. It is, therefore, surprising that in his supporting affidavit at paragraph 4, he laconically states that the judgment and the proceedings were availed to him on 14th August, 2019. This is a blatant and pellucidly naked lie. A litigant who comes to court to seek discretionary and other orders must come to court with clean hands.

8. I do note that this dispute can be traced to an adjudication process that took place in 1966, 53 years ago. This is a long time ago. I also note that the apposite judgment was availed to the applicant on 29th May, 2019, the same day the judgment was delivered. The applicant filed his Notice of Appeal on 14th October, 2019. He does not explain why it took him over 4 months to file the Notice of Appeal. I deem this to be inordinate delay which falls foul of Rule 75 of the Court of Appeal Rules. I do note that in this area, this court does not have the final word. Order 42 Rule 6 allows an applicant to seek stay orders in a higher court.

9. **Order 42 Rule 6** of the Civil Procedure Rules states as follows:

“(2) No order for stay of execution shall be made under subrule (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.”

I find that there has been unreasonable delay in the filing of this application. I also note that the applicant has not offered any security for the due performance of the decree or orders emanating from the impugned judgment. I also find that the Notice of Appeal has been filed outside the stipulated time.

10. In the circumstances, I find that this application lacks merit.

11. The application is hereby dismissed.

12. No costs are awarded in this application.

13. It is so ordered.

Delivered in open Court at Chuka this 29th day of October, 2019,

in the presence of:

CA: Ndegwa

Obadiah Murujah Mugendi – Petitioner

Charles Kabit Japhet – 1st Respondent

P.M. NJORGE

JUDGE