



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 08 OF 2019

PATRICK KITHAKA BORICI.....1ST APPELLANT

MISHECK MWANIKI NJERU.....2ND APPELLANT

VERSUS

SHADRACK NYAGA NJERU.....RESPONDENT

RULING

1. This application is dated **1st October, 2019** and seeks orders:

1. That this application be certified as urgent and heard ex-parte in the first instance.
2. That pending the hearing and determination of the application inter-parties, there be a stay of execution of judgment delivered by the honourable court at Chuka in Civil Case No. 127 of 2014 on 24th July, 2018 and all consequential orders.
3. That pending the hearing and determination of this appeal there be a stay of execution of the judgment delivered by the honourable court at Chuka in Civil case No. 127 of 2014 on 24th July, 2018 and all consequential orders.

2. The application is supported by the affidavit of the 1st Applicant, Patrick Kithaka Borici sworn on **1st October, 2019** and has the following grounds:

- a) The appellants/applicants have filed the appeal herein after being aggrieved by the judgment delivered against them in Chuka Civil Case NO. 127 of 2014 where the appellants were some of the defendants and the respondent was the plaintiff in the said suit.
- b) That the honourable court gave judgment against the appellants/applicants that the appellants do move out of the suit land as indicated in the sketch map of LDT IGA/01/04 tribunal case or in default they be forcibly evicted with their property and possessions, eviction against the appellants from the suit property be effected on or after the expiry of a period of 3 months from the date hereof and that the plaintiff shall have the costs of the suit and interest.
- c) The appellants/ applicants will suffer substantial loss and damage if the judgment delivered on the 24th July, 2018 is executed before the appeal is heard and determined as they will be evicted from their land parcels which neighbours the respondent's land parcel after the lapse of 3 months from the date of judgment.
- d) That this appeal shall be rendered nugatory if the judgment delivered on the 24th July, 2019 is not stayed.
- e) That this application has been brought without unreasonable delay.

3. On **8th October, 2019** the parties proffered a consent in the following terms:

BY CONSENT

- a) The application dated 1st October, 2019 be disposed off by way of written submissions.
- b) The status quo prevailing on the ground be maintained pending the hearing of the application.

Muthoni Ndeke

Advocate for applicants

8.10.2019

Matunda Nimrod

Advocate for the respondent

8.10.2019

4. The consent was signed by the advocates representing the parties.

5. The following orders were also issued:

1. The respondent was granted 7 days to respond to the application and the applicants were granted 7 days, after receipt of the respondent's response(s), to further respond.
2. Consent granting maintenance of status quo until hearing of this application is adopted as an order of this court.
3. Upon expiry of 14 days of today, parties to simultaneously file their written submissions.
4. Parties will come to court for directions on **11th November, 2019**.

Delivered in open Court at Chuka this 8th day of October, 2019 in the presence of:

CA: Ndegwa

M/s Muthoni for the Applicants

Matunda for the Respondent

P. M . NJORGE,

JUDGE.