



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT & LAND COURT**

**AT CHUKA**

**CHUKA ELC CIVIL APEAL CASE NO. 10 OF 2019**

**M<sup>Y</sup>TWIGA BORE.....APPELLANT**

**VERSUS**

**ELIPHAS KITHINJI BORE.....RESPONDENT**

**RULING**

1. This application seeks the following orders:-

1. That the instant application be certified urgent and the same be heard on priority basis.
2. That the court be pleased to order and/or direct that the execution of judgment issued by the trial court on 21<sup>st</sup> August, 2019 be stayed pending hearing and determination of the application.
3. Cost of this application be provided for.

2. The application is supported by the affidavit of the applicant/intended appellant sworn on **21<sup>st</sup> October, 2019**. It has the following grounds:

- a) That the full hearing and determination of civil case no. 139 of 2016, judgment was delivered on 21<sup>st</sup> August, 2019.
- b) That the appellant herein was directed to give vacant possession to the respondent herein on land parcel No. Mwimbi/N. Mugumango/1964 within the next 90 days in default the trial court shall issue eviction orders against the defendants.
- c) That the trial court issued a permanent injunction orders against the appellant herein, by himself, family members, agents, assigns or any other person acting at his behest restraining them from further interference whatsoever with the respondent's land parcel Mwimbi/N. Mugumango/1964.
- d) That the trial court further ordered that the cost of the suit be borne by the appellant herein.
- e) That land parcel No. Mwimbi/N. Mugumango/1964 was hived from the estate of the late Bore Rugie (deceased).
- f) That the appellant herein was aggrieved entirely by the judgment of the trial court.
- g) That the appellant herein has beneficial interest to the suit land.
- h) The orders sought are the best and most apt in the circumstances.
- i) No party stands to be prejudiced in the event the orders sought are granted.

3. The application was heard interpartes on 26<sup>th</sup> November, 2019. The applicant asked the court to stay the lower court's judgment in terms of prayer 2 in the application. The respondent opposed the application and told the court that the applicant who was his brother was merely greedy as he had his own land.

4. Upon hearing the parties the following directions/orders are issued:-

a) Prayer 2 in the application is granted on condition that the applicant/intended appellant deposits with court as security the sum of Kshs.500,000/= only within 14 days of today FAILING which this conditional stay will automatically lapse.

b) The applicant/intended appellant to file and serve a record of appeal within 14 days of today.

c) Parties will come to court for directions on **11<sup>th</sup> December, 2019**.

**Delivered in open Court at Chuka this 26<sup>th</sup> day of November, 2019 in the presence of:**

CA: Ndegwa

M'Twiga Bore – Applicant

Eliphas Kithinji Bore - Respondent

**P. M. NJOROGI,**

**JUDGE.**