



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. 87 OF 2019

ANITA GAKII M'MWONGERA.....APPELLANT

VERSUS

DAVID MBAYA.....RESPONDENT

RULING

1. Vide the application dated 28.6.2019 applicant seeks orders that:

- (i) That the application be certified a urgent and be heard exparte in the first instance.
- (ii) That the honourable court be pleased to stay execution of the judgment decree and all the consequential orders in Githongo ELC number 45 of 2018 made on 31.5.2019 pending the hearing and determination of this application inter-partes.
- (iii) That this honourable court be pleased to stay the judgment-decree and all the consequential orders in Githongo ELC number 45 of 2018 made on 31.5.2019 pending the hearing and determination of the intended appeal herein.
- (iv) That this honourable court be pleased to issue further orders as it deems fit and just in the circumstances.
- (v) Costs.

2. The grounds in support of the application are that:

- (a) That the judgment in Githongo ELC number 45 of 2018 was entered against the appellant on 31.5.2019.
- (b) That on 11.6.2019 the respondent herein while in the company of hired goons by use of force and violence invaded the appellant's nappier grass and sprayed the entire crop with a herbicide thus destroyed a portion of half an acre.
- (c) That the respondent has threatened to demolish the appellant's house standing on the suit land and the appellant is apprehensive that the respondent may carry out the said demolition any time from now hence the urgency.
- (d) That the respondent is threatening to execute the said ruling against the appellant which will render the appellant's appeal nugatory if orders are not granted.
- (e) That unless the orders sought herein of stay of execution of the said ruling are issued, the appellant shall suffer irreparable loss and damages and left homeless and destitute as she has no other place to call home.

3. Applicant has filed a supporting affidavit where she avers that the judgment in Githongo ELC number 45 of 2018 was delivered on 31.5.2019 and that on 4.6.2019 the applicant applied for typed proceedings and judgment to enable her file appeal against the said judgment but the said documents are not ready. The applicant also avers that the respondent has vowed that he will demolish her house upon lapse of 30 days right of appeal and that she has no other place to call home She is apprehensive that the respondent may carry out his plans since after reporting the spraying of nappier grass incident, no action was taken. She also states that she was aggrieved by the said ruling and she has filed an appeal against the ruling. She also depones that she has filed a memorandum of appeal. She avers that this was not the first time her brothers destroyed her properties in a scheme to evict her from her land and respondent was even charged with offence of malicious damage to properties.

4. The applicant therefore seeks the protection of the court pending hearing and determination of the appeal and prays for stay of execution against the said judgment so that the appeal may not be rendered nugatory failure to which she will suffer irreparable loss and damage which cannot be compensated by way of damages.

5. The respondent was served but no response was availed. The application hence stands as unopposed.

6. I have perused the Judgment of 31.5.2019. Plaintiff's testimony as captured therein was that she has lived on the suit land since 1990. She therefore stands to suffer substantial loss if a stay is not granted. **I therefore allow the application for a stay of execution for a period of ONE YEAR. The costs of this application shall abide the outcome of the appeal.**

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 18TH DAY OF NOVEMBER, 2019.

IN THE PRESENCE OF:-

C/A: Kananu

Ms. Gitonga for appellant

HON. LUCY. N. MBUGUA

ELC JUDGE