



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT CHUKA

CHUKA ELC CIVIL APEAL CASE NO. 10 OF 2019

M'TWIGA BORE.....APPELLANT

VERSUS

ELIPHAS KITHINJI BORE.....RESPONDENT

JUDGMENT

(Appeal from the judgment of the Chief Magistrates Court of Kenya at Chuka Hon. J. M. Njoroge – CM dated 21st August, 2019 in Civil Case No. 139 of 2016)

1. The Memorandum of Appeal in this appeal states as follows:-

1. M'Twiga M'Bore the above-named appellant appeals to the high court against the ruling of the above mentioned decision on the following ground (sic):
2. That the learned magistrate erred and misdirected himself in law and facts in finding the issues in the application had been conclusively determined by the high court at Meru in the high court succession cause No. 93 of 1998.
3. That the learned trial magistrate erred in law and facts by failing to recognize the existing and future means and needs of the dependants to the estate of the late Bore Rugie (deceased) while making orders as to the distribution of the said estate.
4. That the trial magistrate erred in law and facts by issuing orders sought by the respondent herein and failing to recognize that the appellant has beneficial interest to the suit land.

It is proposed to ask the court for an order setting aside the ruling, order for status quo to be maintained pending the hearing and determination of this appeal.

Dated at Chuka this 31st day of October, 2019

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M'TWIGA M'BORE

APPELLANT

2. On 26th December, 2019, this court delivered a ruling in the following terms:

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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 21st 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 **21st 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 21st 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 26th 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:-

1. 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.
2. The applicant/intended appellant to file and serve a record of appeal within 14 days of today.
3. Parties will come to court for directions on **11th December, 2019**.

Delivered in open Court at Chuka this 26th day of November, 2019 in the presence of:

CA: Ndegwa

M'Twiga Bore – Applicant

Eliphas Kithinji Bore - Respondent

P. M. NJORGE,

JUDGE.

3. On **11th December 2019**, M'Twiga Bore, the appellant, told the court that he had not filed the apposite record of appeal because he had been sick. He told the court that he desired to withdraw his appeal.

4. Eliphas Kithinji Bore, the respondent, asked the court to dismiss the appeal and issue a judgment in his favour and that costs be awarded to him.

5. Upon consideration of all facts and circumstances apposite to this appeal, I issue judgment against the appellant and in favour of the respondent in the following terms:-

a) This appeal is hereby dismissed.

b) Costs are awarded to the respondent.

Delivered in open Court at Chuka this 17th day of December, 2019 in the presence of:

CA: Ndegwa

Eliphas Kithinji Bore – Respondent

P. M. NJOROGI,

JUDGE.