



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC PETITION CASE NO. 02 OF 2018

**IN THE MATTER OF ARTICLES 20, 21, 22, 13 AND 165 (3) (B) OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF ARTICLES 1 (1), 40, 42, 53 AND 156(6) OF THE CONSTITUTION OF
KENYA 2010**

AND

**IN THE MATTER OF THE CONSTITUTION OF KENYA (PROTECTION OF RIGHTS AND
FUNDAMENTAL FREEDOMS) PRACTICE AND PROCEDURE RULES, 2013**

AND

**IN THE MATTER OF SECTIONS 3, 4 (3) AND 13 OF THE ENVIRONMENT AND LAND
COURT ACT NO. 19 OF 2011**

BETWEEN

THE HON. ATTORNEY GENERAL.....PETITIONER/APPLICANT

VERSUS

ISAIAH MUTURI MUCEE.....RESPONDENT

RULING

1. This application states that it has been brought to court under Order 42 Rule 6 of the Civil Procedure Rules, Sections 1A, 1B, 3, 3A, 6 & 63(c) of the Civil Procedure Act Chapter 21 Laws of Kenya and all other enabling provisions of the law and 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 13th day of November, 2019 pending appeal.
3. This honourable court be pleased to order status quo be maintained in respect of parcel No. 5 Ntoroni Adjudication Section pending appeal.

4. Cost of this application be in the cause.

2. The application is supported by the affidavit of Isaiah Muturi Mucee, the applicant, dated **20th November, 2019** and 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 Respondent herein may be evicted from the suit land rendering the Respondent's appeal nugatory.

3. The Petitioner will not suffer any prejudice if the orders sought herein are granted.

3. When the application was heard interpartes on **11th December, 2019**, the applicant told the court that if stay was not granted, he would be rendered destitute as he was using the land to eke out a living.

4. Mr. Kiongo told the court that the applicant had confirmed that he was in disobedience of injunctive orders issued by this court on **20th March, 2018**. He stated that he who comes to equity must do so with clean hands and felt that the applicant had come to court with dirty hands, having disobeyed court orders.

5. This court notes that the applicant has not filed a Notice of Appeal within the stipulated time. The judgment was delivered on 13th November, 2019. It is hence true that a Notice of Appeal was not filed within 14 days.

6. The Petitioner/Respondent has filed grounds of opposition in the following terms.

GROUND OF OPPOSITION

Take notice that the Respondent herein shall oppose the application dated 26th November, 2019 on grounds that:

1. Orders are not tenable against the Petitioner.

2. Application lacks merit, is a non-starter and abuse of court process.

3. The Respondent has not filed any Notice of Appeal to warrant orders sought.

Dated at Meru 3rd this day of December, 2019

J. M. KIONGO,

SENIOR LITIGATION COUNSEL,

FOR: HON. ATTORNEY GENERAL & DEPARTMENT OF JUSTICE.

7. Considering the pleadings, the submissions made by the parties, and the totality of the facts and circumstances surrounding this application, I find that it lacks merit.

8. This application is hereby dismissed.

9. Costs are awarded to the Petitioner/Respondent.

Delivered in open Court at Chuka this **11th day of December, 2019** in the presence of:

CA: Ndegwa

Isaiah Muturi Mucee – Applicant/Respondent

Justin Kiongo for the Petitioner

P.M. NJORGE,

JUDGE.