



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**OF MERU**

**ELC CASE NO. 18 OF 2015**

**ERIC MUTWIRI KINYUA.....PLAINTIFF**

**VERSUS**

**KIRAI M'IMWERA.....RESPONDENT**

**RULING**

1. The plaintiff/Applicant filed this application dated 17.07.2019 seeking this honourable court to order a stay of execution of its judgement dated 03/06/2019 and decree thereof until the intended appeal is filed heard and determined.

2. The application is supported by the sworn affidavit of **Eric Mutwiri Kinyua** who averred that he filed this suit seeking a declaration that he acquired 1 ½ acres of L.R NO. Abothuguchi /Githongo/1147 by way of adverse possession. Upon losing his case, he filed a notice of appeal and has equally applied for certified copies of proceedings. He attached a letter from the Deputy Registrar and receipt to prove that he has applied for certified copies of the proceedings.

3. He further avers that if the 6 months given to vacate the suit premises lapses before the intended appeal is determined, he shall suffer irreparable loss and damage and his appeal shall be rendered nugatory.

4. The application has been opposed by the defendant/respondent vide the Replying affidavit dated 23/09/2019 where he avers that the delay in bringing the application has not been explained since the judgement was delivered on 3/06/2019 and that the applicant has been wrongfully and without any justifiable cause in occupation of his (respondents) land hence a grant of stay of execution will cause him to suffer greatly.

**Analysis and Determination**

5. Both parties sought to rely on their respective affidavits as filed which I have dully considered. This application invokes the discretionary powers of the court. It is brought under **Order 42 Rule 6 of the Civil Procedure Rules, 2010** which empowers this court to stay execution, either of its judgement or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided for under Rule 6(2) as follows:

***“No order for stay of execution shall be made under subrule (1) unless– (a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”***

**Unreasonable Delay**

6. The application was filed on 23.7.2019, which is one month and 20 days from the time the Judgement of the trial Court was delivered. There is a delay but the same cannot be termed as inordinate.

**Substantial Loss**

7. The applicant has alluded to the fact that he has built 5 roomed semi-permanent house where he resides with his wife and children and equally cultivates on the said land. The finding of the court on the issue of occupation was that applicant's occupation on the suit land was consensual through his father. Further recognition of this occupation is to be found in the final orders of the court where it was stated that the applicant should vacate the suit land within a period of 6 months. It follows that applicant stands to suffer substantial loss if the orders are not granted.

8. However, there are factors which cloud the plaintiffs claim in this application. Firstly, there is no evidence of an appeal. The certificate of delay dated 2.9.2019 shows that the proceedings were supplied to the applicant on 20.8.2019, but by the time the matter was mentioned before me on 25.9.2019, there was still no mention of an appeal or an application to extend time to appeal. Further, the applicant has not offered any security as envisaged under order 42rule 6 of the Civil Procedure Rules. In the circumstances, the court will proceed to grant a conditional stay in the following terms.

**1) There is to be a stay of execution of the Judgment of 3.6.2019 where by the applicant is to deposit in this court a sum of Ksh. 200 000 within a period of 30 days failure to which the stay orders shall lapse.**

**2) The the order of stay shall last for a period of 8 (eight) months only from the time of delivery of this ruling.**

**3) Applicant to pay costs of application.**

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 4<sup>TH</sup> DECEMBER, 2019 IN THE PRESENCE OF:-**

C/A: Kananu

Mr. Ngaira holding brief for Mr. Mburugu for applicant

Mr. Mwirigi holding brief for Mokuu for respondent

Applicant

Respondent

**HON. LUCY. N. MBUGUA**

**ELC JUDGE**