



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

ENVIRONMENT AND LAND CASE NO. 105 OF 2015

BETTY KAJUJU AND GEORGE KIREMU MUTWIRI

(THROUGH THE DONEE OF THE POWER OF ATTORNEY) JANET KAREGI MWORIA.....PLAINTIFF

VERSUS

RICHARD MUNENE MWORIA.....DEFENDANT

RULING

1. This application is dated 7th August, 2018 and seeks the following orders:-

1. That this honourable court be pleased to certify this application urgent, and the same be heard ex-parte at the first instance.
2. That this honourable court be pleased to issue an order for stay of execution of the judgment, orders and decree of 23.05.2018 pending hearing and determination of this application and the intended appeal.
3. That the honourable court be pleased to issue an order of stay of any further execution of the decree herein against the property of the applicant pending the hearing and determination of this application inter-partes and thereafter the intended appeal to the court of appeal.
4. That this honourable court be pleased to issue an order lifting the warrant to court bailiff to give vacant possession against the defendant/applicant property undertaken by John Mbijiwe T/A Bealine Kena Auctioneers and order for the unconditional discharge and / or cancellation of the warrants issued herein on 26.07.2018.
5. That this honourable court be pleased to declare that the execution process undertaken by the plaintiff/respondent herein resulting into issuance of the warrants against the defendant/applicant property is irregular, unlawful and illegal and that any lawful costs incurred by the auctioneer, if any, be borne by the plaintiff/respondent.
6. That the costs of this application be borne by the plaintiff/respondent in any event.

2. It has the following grounds:

- a) This honourable court entered judgment against the applicant on 23.05.2018 with effect that the applicant was to be evicted from the suit land.
- b) The applicant was aggrieved by the judgment herein and filed a notice of appeal against the entire judgment dated 05.06.2018.
- c) That the applicant has a permanent home on the suit land where he has been living with his family for over a decade now.
- d) That plaintiff/respondent has never notified us of the said judgment despite being aware of the same.
- e) The said execution process as initiated by the plaintiff/respondent is irregular, unlawful and illegal and the same ought to be lifted and the warrants of attachment and sale issued herein ought to be cancelled, vacated and / or discharged.
- f) That unless an immediate order for stay of eviction or further execution is made forthwith, the defendant/applicant's property is at risk of being destroyed and his family rendered homeless and the defendant/applicant stands to suffer irreparable loss and damage.

3. The application is supported by the affidavit of the applicant which states as follows:-

I, RICHARD MUNENE MWORIA C/O P. O. Box 1850 Meru, do hereby make oath and state as follows:-

1. That I am the defendant herein hence competent to swear this affidavit in support of the application herein.
2. That the plaintiff has instructed John Mbijiwe T/A Bealine Kenya Auctioneers to evict me from the suit land which action will cause irreparable damage upon me and my family unless the court grants the orders herein sought.
3. That this honourable court entered judgment against me on 23.05.2018 with effect that I be evicted from the suit land.
4. That I was aggrieved by the judgment herein and filed a notice of appeal against the entire judgment dated 05.06.2018. Annexed herewith is a copy of the notice of appeal marked "RMM1".
5. That I have lived on the suit land for several years with extensive development including a permanent home where I have been living with my family for over thirty (30) years now.
6. That on 28.07.2018, Saturday, I was called by my neighbour who informed me that there were people demolishing my property. Annexed herewith are photographs marked "RMM2".
7. That I was not informed of the intended execution of the decree or warrants that were being implemented on a Saturday. Annexed herewith is a copy of the said warrant marked "RMM3".
8. That the said execution process as initiated by the plaintiff/respondent is irregular, unlawful and illegal and the same ought to be lifted and the warrants of eviction issued herein ought to be cancelled, vacated and / or discharged.
9. That unless an immediate order for stay of eviction or further execution is made forthwith, the defendant/applicant's property is at risk of being destroyed and his family rendered homeless and the defendant/applicant stands to suffer irreparable loss and damage.
10. Honourable court issued an order that judgment in this matter was to be by way of notice.
11. That the plaintiff/respondent has never notified the defendant/applicant of the said warrant of execution despite being aware of the procedure.
12. That without following the due procedure the plaintiff/respondent, unlawfully and irregularly set the execution process in motion and caused partial destruction of my property on a Saturday in my absence.
13. That the said execution process as initiated by the plaintiff/respondent is irregular, unlawful and illegal and the same ought to be lifted and the warrants of attachment and sale ought to be cancelled, vacated and / or discharged.
14. That unless an immediate order for stay of seizure or attachment or further execution is made forthwith, the defendant/applicant's property is at risk of seizure and sale and the defendant/applicant stands to suffer irreparable loss and damage.
15. That the intended appeal will be rendered nugatory should the respondent proceed to implement the judgment unless the orders sought are granted.
16. That the content of this affidavit is true to the best of my knowledge, information and belief.

4. When the application was heard inter partes on 8th August, 2018, Mr. Thangicia told the court that although the applicant had filed a notice of appeal, the plaintiff had attempted to evict the applicant from the subject premises. He submitted that if orders for stay of execution of the judgment were not given, the applicant would suffer irreparable loss.

5. I do note that the impugned judgment was delivered on 23rd May, 2018, two and a half months ago. I, therefore, do not certify this application as urgent. It will, however, be heard on priority basis.

6. I find that the apposite eviction was sanctioned by the court and also note that on 23rd May, 2018, the Hon. Lady Justice Mbugua had given the applicant a stay of 60 days.

7. Judges are never comfortable tinkering with decisions made by judges whose jurisdiction is horizontal to theirs. I find it necessary to refer this matter to the Hon. Lady Justice Lucy Mbugua at Meru, to hear the application and / or give directions regarding if she will allow a stay of execution and what sum of money as deposit for security may be required.

8. I direct that the application be heard on 14th August, 2018 at Meru, when the ELC Judge will give appropriate directions including, if necessary, another hearing date.

9. It is so ordered.

Delivered in open court at Chuka this 8th day of August, 2018 in the presence of:

CA: Ndegwa/Mungai

Thangicia for the applicant

P.M. NJORGE

JUDGE