



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CIVIL APPEAL CASE NO. 06 OF 2018

BENSON MURITHI RITHAA.....APPELLANT

VERSUS

STEPHEN MUTURI NYAGA.....RESPONDENT

RULING

1. This application states that it has been brought to court under Order 42, Rule 18, Civil Procedure Rules, section 65(1) of the Civil Procedure Act and all other enabling provisions of the law. It is dated 31.7.2018 and seeks the following orders:

1. That service of this application be dispensed with in the first instance in view of its urgency.
2. That this honourable court be pleased to stay the execution of the decree that has been issued in respect of the judgment entered herein on 4th July, 2018 and any other order that may be issued pursuant thereto, pending appeal.
3. That the costs of this application be provided for.

2. The application is buttressed by an affidavit sworn by the applicant, Benson Murithi Rithaa, on 31st July, 2018.

3. The application has the following grounds:

- a) That the applicant has an arguable appeal with a high probability of success.
- b) That if the said stay of execution is not granted the applicant's appeal will be rendered nugatory and the applicant will suffer irreparable damage.
- c) That unless the application is granted, the respondent may levy execution against the applicant.
- d) That substantial loss will result to the applicant unless the orders sought are granted.
- e) That this application has been made without unreasonable delay.
- f) That the application ought to be granted in the interests of Equity and Justice.

4. The apposite supporting affidavit states as follows:

I, BENSON MURITHI RITHAA of P. O. Box 738-60400 Chuka in the Republic of Kenya do hereby make oath and state as follows:-

1. That, I am a male adult of sound mind, working for gain in the Republic of Kenya and I am well versed with the facts deponed to in this affidavit and can positively swear thereto from my personal knowledge.
2. That, I am competent to swear this affidavit in support of the facts set out in the notice of motion filed herein.
3. That, I purchased land parcel L.R. KARINGANI/MUGIRIRWA/253 measuring 0.15 acres in the year 2014 from the respondent herein.
4. That, I have developed the said piece of land by building a house worth three million (3,000,000/=) (Attached herein and marked

BMR1 are copies of photographs for the developed portion of land).

5. That a judgment was issued against me ordering for my eviction from my developed matrimonial house (attached and marked BMR2 is a copy of the judgment).
6. That after the judgment, the respondent has been bringing purchasers in my matrimonial house with a view of selling it to them.
7. That I constructed the house immediately the respondent placed me on the suit property pursuant to the contract.
8. That my family and I live in the subject house that is in the suit land a fact not denied by the respondent.
9. That if the orders of stay sought are not granted and the respondent disposes off my matrimonial home I stand to suffer irreparably.
10. That by placing me on the suit land the respondent created an overriding interest in his title.
11. That the respondent should not be allowed to benefit from his own mistake and to unfairly enrich himself contrary to public policy and at my expense.
12. That I have a meritorious appeal with high chances of success.
13. That what is deponed to herein is true to the best of my knowledge and understanding.

5. During ex-parte hearing, Mr. Kijaru, the applicant's advocate told the court that the applicant was in occupation of the land where he had his matrimonial home. He told the court that the house he had constructed on the land was worth more than Kshs.3,000,000/-. He urged the court to stay execution of the decree spawned by the judgment of the CM's Court, Chuka, in Chuka CMCC No. 195 of 2015 delivered on 4th July, 2018. He told the court that if execution was not stayed the applicant would suffer irreversible loss.

6. I have considered the pleadings and the oral submissions made in this matter. I also take judicial notice of the fact that this court has commenced its recess.

7. I issue the following orders:

1. This application should be served upon the plaintiff within 10 days of today.
2. Parties are granted open leave to respond, as and if necessary before the date the application will be heard interpartes.
3. Prayer 2 in the application is granted subject to the applicant depositing in the court's account as security the sum of Kshs. Five Hundred Thousand (Kshs.500,000/=) only within the next 14 days failing which the stay of execution granted herein will automatically lapse.
4. This application will be heard interpartes on 24th September, 2018.

8. It is so ordered.

Delivered in open court at Chuka this 1st day of August, 2018

in the presence of:

CA: Ndegwa

Kijaru for the Applicant

P.M. NJOROGE

JUDGE