



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS**

**ELC. CASE NO. 46 OF 2011 (O.S)**

**JOHN MUANGE MATILI.....PLAINTIFF/RESPONDENT**

**VERSUS**

**BEATRICE MWOVI MBUSYA.....DEFENDANT/APPLICANT**

**MAINGI MWOVI.....DEFENDANT/APPLICANT**

**RULING**

1. In the Application dated 5<sup>th</sup> March, 2018, the Defendants/Applicants are seeking for the following orders:

***a. That there be stay of execution of the entire Judgment of Hon. O. A. Angote delivered on 26<sup>th</sup> January, 2018 in Machakos ELC (OS) No. 46 of 2011, John Muange Matili vs. Beatrice Mwovi Mbusya & Maingi Mwovi pending the hearing and determination of the intended Appeal herein.***

***b. The costs of this Application be in the cause.***

2. The Application is based on the grounds that the Defendants being dissatisfied with the Judgment of the court by allowing the Plaintiff's claim for adverse possession over the entire suit land have preferred an Appeal; that unless a stay is granted, the Applicants and other beneficiaries of the Estate of the late Jackson Mwovi are likely to lose their only source of livelihood and home and that the Applicants are willing to abide by any conditional terms of stay.

3. In reply, the Plaintiff deponed that the court found that he was entitled to the suit land by way of adverse possession; that the Applicants have not provided security of costs to warrant the grant of the orders and that the Application should be dismissed. Both the Plaintiff and the Defendants' advocates filed brief written submissions which I have considered.

4. On 26<sup>th</sup> January, 2018, this court ordered that the Plaintiff/Respondent should be registered as the owner of the land parcel number Machakos/Ulu/31 by virtue of adverse possession. The Applicant in the current Application has since filed a Notice of Appeal challenging the decision of the court. In the meantime, the Defendants/Applicants are seeking for a stay of execution of the Judgment pending the hearing of the Appeal.

5. The elements that an Applicant is required to prove before a stay of execution is granted are enumerated in Order 42 Rule 6(2) of the Civil Procedure Rules. The said Order provides that the Applicant should show that substantial loss may result to him unless the order is made; the Application must have been made without unreasonable delay; and such security on the court orders for the due performance of such decree as may ultimately be binding on him.

6. It is trite that a stay of execution is issued to balance claims pending the finalization of litigation, and to preserve the subject matter in dispute. From the Judgment of this court, the title to the suit land is supposed to be transferred to the Respondent who may dispose the land or deal with it in a manner that is prejudicial to the Applicants. This is likely to lead to substantial loss to the Applicants and render the pending Appeal nugatory. In the circumstances, the prevailing status quo should be maintained so that the suit property is not removed out of the Applicants' reach in the event they win the Appeal.

7. The Application by the Applicants was filed within a week of the decision of the court. Consequently, the same was filed without unreasonable delay. Considering that the Respondent is in possession of the suit land, the requirement for security for due performance of the decree is not necessary.

8. For the above reasons, I allow the Application dated 5<sup>th</sup> March, 2018 as prayed.

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 12<sup>TH</sup> DAY OF OCTOBER, 2018.**

**O.A. ANGOTE**

**JUDGE**