REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO 89 OF 2017

FORMERLY MERU ELC CASE NO.410 OF 1991

GILBERT KATHENYA MUKUNGI.....PLAINTIFF

VERSUS

EVANGELINE KANYUA MWIANDI (as legal representative of the estate of

MWIANDI KAIBIRU).....DEFENDANT

RULING

1. This application is brought to court under Order 6(1) and 6(2) of the Civil Procedure Rules. It seeks the following orders:

    1. That the application herein be certified urgent and be heard ex-parte in the first instance.

    2. That pending the inter-parties hearing of the application herein, there be an order of stay of execution/implementation of the judgment of the court dated 23.10.2018.

    3. That pending the hearing and determination of the intended appeal to the Court of Appeal, there be a stay of the execution of the court's judgment delivered on the 23.10.2018.

2. The application has the following grounds:

    i) That the plaintiff is in the process of executing the judgment of the court as he took surveyors to the suit land on the 14.12.2018, who caused out some survey works.

    ii) That if the judgment is executed, the applicant stands to suffer substantial loss.

    iii) That if the judgment is executed, the intended appeal will be rendered nugatory.

    iv) That the application has been made without unreasonable delay.

3. During the exparte hearing, Miss Matiri, the applicant's advocate, told the court that on 14th December, 2018, the defendant, who has a judgment in his favour in this matter, had taken surveyors to the suit land with a view to excising 7 acres from the suit land as per the apposite judgment. She told the court that if execution of the judgment was completed, the defendant/applicant would suffer irreparable damages not compensable in monetary terms. She also said that the intended appeal would be rendered nugatory. More or less, her submissions were in consonance with the grounds stated on the face of the application.

4. This application has been heard exparte during this court's recess. I opine that the suit property should be preserved pending interpartes hearing of this application.

5. Order 42 Rule 6(2): of the Civil Procedrue Rules has been stated by the applicant as one of the provisions of the law which buttresses her application.

It states:

Order 42 Rule 6(2): 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.

6. I issue the following orders:-

a) This application is not certified urgent BUT will be heard on priority basis.

b) Prayer 2 is granted pending hearing of this application AND the defendant/applicant is ordered to deposit with court as security the sum of Kshs. One Million and Fifty Thousand (Kshs.1,050,000/=) within 21 days of the date of delivery of this ruling which is the 21st day of December, 2018 FAILING WHICH the order of stay granted herein will stand LAPSED.

7. As the court is in recess and the ELC Judge will be on leave until 20th March, 2019, the application will be heard interpartes on 27th March, 2019 AND the defendant/applicant is ordered to serve the application upon the respondent/defendant within the next 10 days.

8. It is so ordered.

Delivered in open Court at Chuka this 21st day of December, 2018 in the presence of:

CA: Ndegwa

Miss Matiri present for Applicant/Respondent

P. M. NJOROGE,

JUDGE.