



**REPUBLIC OF KENYA**

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

**ELC. CASE NO. 150 OF 2008**

**DAVID OYIARE NTUNGANI .....PLAINTIFF**

**VERSUS**

**MATUIYA OLE NAISUAKU ORKET .....DEFENDANT**

**RULING**

1. In the Application dated 4<sup>th</sup> July, 2017, the Defendant is seeking for the following orders:

***a. That pending the hearing and determination of the Intended Appeal herein an order be granted, staying execution of the order made by this Honourable Court on 12<sup>th</sup> May, 2017.***

***b. That this Honourable Court makes appropriate orders to preserve the subject matter of the Intended Appeal herein.***

***c. That the costs of this Application be provided for.***

2. The Application is premised on the grounds that aggrieved by the decision of this court, the Applicant has lodged a Notice of Appeal in the Court of Appeal; that the Respondent may execute the Judgment of this court by evicting the Applicant from the suit land and that the Application has been filed without undue delay.

3. The Applicant deponed that unless the orders of stay of execution of the Judgment are granted, he shall suffer loss by becoming homeless.

4. In response, the Respondent deponed that he is the bona-fide registered proprietor of the suit land; that the Applicant has his land and that the Applicant has damaged the suit land by cutting down trees, leasing the land, overgrazing on the land and that the waste and damage to the land will only increase if he is not kept away from the land.

5. The Respondent finally deponed that the order of stay can be granted to the extent that he does not dispose off the land until the appeal is conducted and that in any event, the Applicant has not offered any security for the due performance of the decree.

6. The advocates for the parties appeared before me on 11<sup>th</sup> July, 2017 and made oral submissions. I have considered those submissions and the authorities.

7. This suit was commenced by the Respondent in which he sought for an order of vacant possession in respect of a parcel of land known as Kajiado/Lorngusua/1298. In the said suit, the Respondent prayed for

the eviction of the Applicant from the suit land.

8. In the evidence that was tendered in court, the Respondent deponed that the Applicant herein has illegally taken possession of his land and reneged on an earlier agreement to vacate the land.

9. After hearing the matter, this court, in its Judgment of 12<sup>th</sup> May, 2017 found that it is the Respondent who was entitled to the suit land. The court directed the Applicant to give vacant possession of the suit land within sixty (60) days from the date of the Judgment.

10. The Applicant has challenged the Judgment of this court by lodging a Notice of Appeal. In the meantime, the Applicant is seeking for a stay of execution of the Judgment pending the hearing and determination of the Appeal.

11. According to the provisions of Order 42 Rule 6(2) of the Civil Procedure Rules, an order of stay of execution can be granted if the court is satisfied that substantial loss may result to the Applicant unless the order is made and when the Application has been made without unreasonable delay. The Applicant is also required to give security for the due performance of the decree.

12. The Respondent has not denied that the Applicant is living on a portion of the suit land with his family. Indeed, the Judgment of this court has directed that the Applicant should be evicted from the suit premises.

13. The Applicant has deponed that he will be rendered homeless if the order of this court is executed.

14. Although this court made a finding in its Judgment that the Applicant was allocated a distinct parcel of land by the officials of Illpartimaru Group Ranch, the Applicant's houses will still be demolished if the orders of this court are implemented.

15. It is therefore true that the demolition of the Applicant's houses will amount to substantial loss, considering that he will have to use resources to move his family and put up a new home on the land that he was allocated.

16. The Application was filed without unreasonable delay and the subject matter being land, the deposit of security is not necessary.

17. Consequently, and to avoid the said substantial loss that the Applicant is likely to suffer with the demolition of his house(s), the Judgment of this court should be stayed pending the hearing of the appeal. The order of stay of execution will be granted in the following terms;

***a. Pending the hearing and determination of the intended appeal, an order be and is hereby issued staying execution of the Judgment of 12<sup>th</sup> May, 2017 on condition that the Applicant files the Record of Appeal within six(6) months from the date of this Ruling.***

***b. Pending the hearing and determination of the intended appeal, the Applicant is restrained from engaging in any acts of wasting, leasing, alienating the suit land or putting up any new structures on the suit land.***

***c. Each party to bear his own costs.***

**DATED, DELIVERED AND SIGNED IN MACHAKOS THIS 23<sup>RD</sup> DAY OF NOVEMBER, 2017.**

**O.A. ANGOTE**

**JUDGE**