



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT NYERI

ELC NO. 275 OF 2014 (FORMERLY CIVIL SUIT NO.24 OF 2011)

JOSEPH GACHANJA GITUTO PLAINTIFF/RESPONDENT

VERSUS

GIDEON MWANGI CHEGEDEFENDANT/APPLICANT

RULING

Introduction

1. The notice of motion dated **8th July, 2014**, brought under **Order 22 Rule 22** of the Civil Procedure Rules, seeks to stay the execution of the orders granted on **20th June, 2014** in favour of the respondent.
2. The application is premised on the grounds that the respondent has since filed an appeal against the judgment on which the orders are premised and that the respondent will not suffer any prejudice if the orders sought are granted.
3. In support of the application, the applicant swore the affidavit sworn on **8th July, 2014** in which he has deposed that the judgment on which the orders are premised has not been satisfied; that he has since filed a notice of appeal and requested for proceedings with a view of lodging an appeal and that the appeal raises serious issues of adverse possession and concerning Nyeri HC Application No.153 of 2000 which is still pending in this Court. The applicant contends that the respondent will not suffer any prejudice if the orders sought are granted.
4. On 11th March, 2015 when the application came up for hearing only the applicant turned up for hearing. As the court's record showed that the hearing date was taken in the presence of the respondent's counsel, the court allowed the application to be heard *ex parte*.
5. The applicant informed the court that he served the application on the respondent's advocate on 10th July, 2014 and that it was unopposed. For that reason he urged the court to allow the application as prayed.

Analysis and determination

6. As pointed out above, the court record shows that the application herein was fixed for hearing on 13th January, 2015 in the presence of the applicant and Wilson for A.K advocate for the defendant. Although the capacities of the parties are interchanged, in that the applicant who was the defendant is indicated as the plaintiff and the plaintiff indicated as the defendant, I presume that the term plaintiff therein refers to the applicant and defendant to the respondent.

7. Upon perusing the judgment appealed from, I noted that when the judgment was delivered, the applicant made an oral application for stay of execution until case No. 153 of 2000 is heard and determined.

8. In reply to that application, counsel for the respondent **Mr. King'ori**, stated that the respondent should make a formal application. Consequently, in his judgment the trial judge directed the applicant to make a formal application.

9. **Order 22 Rule 22** under which the current application herein is premised, provides as follows:-

“The court to which a decree has been sent for execution shall, upon sufficient cause being shown, stay the execution of such decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order to stay the execution, or for any other order relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto.”

10. In accordance with the direction given by the trial court, the applicant filed the current application on **9th July, 2014**, barely two weeks after the order sought to be stayed was granted.

11. There being no evidence that the order of the court sought to be stayed was executed and being satisfied that the respondent knew of the application and failed to file any objection, I allow the application as prayed.

Dated, signed and delivered at Nyeri this 7th day of May 2015.

L N WAITHAKA

JUDGE

In the Presence of:

Mr. Gideon Mwangi Chege – Defendant

No appearance for the plaintiff

Lydia - court Assistant