



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: R. N. NAMBUYE, J.A. (In Chambers))

CIVIL APPLICATION NO. NAI 312 OF 2014 (UR 234/2014)

BETWEEN

GEORGE M. MUHOROAPPLICANT

AND

MWALIMU INVESTMENT COMPANY LTD.....1ST DEFENDANT

G.M. MUHORO2ND DEFENDANT/APPLICANT

(An application for staying pending the hearing and determination of the Civil Appeal No. 339 of 2014 from the High Court of Kenya at Nairobi against the Ruling and Order by (Sergon, J.) delivered 24th October, 2014

in

H.C.C.C. NO. 3568 of 1994)

RULING

1. On the 9th day of December this matter was placed before me (Nambuye, JA) for certification of urgency. I declined to certify the matter as urgent. The applicant made their letter addressed to the Deputy Registrar, Court of Appeal dated 15th day of December 2014, in compliance with Rule 47(5) of this court's rules.
2. Learned counsel Mr. Osoro of Osoro Juma & Co. Advocates requested the file to be placed before me for the *inter partes* hearing on the question of urgency.

3. Today 18th December 2014 learned counsel Mr. Osoro D.K. for the applicant and Mr. Muthama David holding brief for Mr. Gichuru for the respondent were in attendance. Mr. Osoro argued that the matter is urgent because the applicant's properties have been attached as demonstrated by the annexures in the applicant's supplementary affidavit. In addition Mr. Osoro urged that they intend to raise serious legal issues in support of their pending application in respect of which the certificate of urgency is sought, that is that the judgment sought to be executed is more than 13 years old, there has been no explanation as to why it took so long to realize it, they take issue with the execution because it arises from an undated and unsigned judgment. That if no reprieve is afforded to the applicant, he will be greatly prejudiced.
4. In response Mr. Muthama intimated to the Court that in the absence of a response to the applicants further affidavit the respondent was handicapped as regards their representations on the factual issues raised by the applicant in support of the certificate of urgency save that he was aware that the execution process has been set in motion by way of proclamation.
5. I have taken into consideration the rival arguments presented by either side I have also seen the proclamation dated 9th December 2012. I am therefore satisfied that there is threat of execution.
6. The applicant intends to take up the issue of the invalidity of the decree sought to be executed. He has given reasons as to why he needs to oppose the threatened execution. The merits of those matters are outside the ambit of this application as they touch on the application intended to be heard under a certificate of urgency.
7. In view of proof of existence of a threatened execution of a matter not within my knowledge as at the time of declining the certificate of urgency I am satisfied that there is a genuine request for the certification sought. I hereby reverse my order of 10.12.2014 declining certification and substitute it with an order that the applicant's application herein be certified agent.

Dated and delivered at Nairobi this 19th day of December 2014.

R. N. NAMBUYE

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JUDGE OF APPEAL

I certify that this is a

true copy of the original.

DEPUTY REGISTRAR



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