



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT CHUKA

CHUKA ELC CASE NO. 06 OF 2018

IN THE MATTER OF THE REGISTRATION OF LANDS ACT NO. 3 OF 2012 SECTION 28(H)

AND IN THE MATTER OF ORDER 37 RULE 7 CIVIL PROCEDURE RULES

AND IN THE MATTER OF SECTION 38 OF THE LAW

OF LIMITATION OF ACTIONS ACT CHAPTER 22

LAW OF KENYA

AND IN THE MATTER OF AN APPLICATION BY MORRIS KIRUJA

MPUNGU AND GENESIO KIRAITHE MPUNGU THAT THE COURT

DO MAKE A DECLARATION THAT THEY ARE ENTITLED TO 2.80

ACRES COMPRISED IN L.R. NO. MUTHAMBI/EREGA/204 UNDER

THE DOCTRINE OF ADVERSE POSSESSION

AND IN THE MATTER OF AN APPLICATION BY MORRIS

KIRUJA MPUNGU AND GENESIO KIRAITHE MPUNGU

THAT THEY BE REGISTERED WITH 2.80 ACRES COMPRISED

IN L.R. NO. MUTHAMBI/EREGA/204 WHICH THEY HAVE

ACQUIRED UNDER THE DOCTRINE OF ADVERSE POSSESSION

MORRIS KIRUJA MPUNGU.....1ST APPLICANT

GENESIO KIRAITHE MPUNGU.....2ND APPLICANT

AND

MARGRET NGIRI MUCHIRI.....1ST RESPONDENT

ROBERT NYAGA RUTERE.....2ND RESPONDENT

RULING

1. This application is dated **30th November, 2020**. The prayers in the application are reproduced in this court's ruling dated **2nd December, 2020** and which is reproduced herebelow:

MORRIS KIRUJA MPUNGU.....1ST APPLICANT

GENESIO KIRAITHE MPUNGU.....2ND APPLICANT

AND

MARGRET NGIRI MUCHIRI.....1ST RESPONDENT

ROBERT NYAGA RUTERE.....2ND RESPONDENT

RULING

1. The Notice of Motion in this application reads as follows:

NOTICE OF MOTION

(In Pursuance to Order 42, Rule 6, Order 22, Rule 22 of the Civil Procedure Rules and Sections 1A, 1B and 3A of the Civil Procedure Act and all other enabling provisions)

TAKE NOTICE that this Honourable Court will be moved on the _____ day of _____ 2020 at 9:00 O'clock in the forenoon or soon thereafter as Counsel for the Appellants/Applicants may be heard on an application for **ORDERS**: -

1. **THAT**, this Application be certified urgent, service of the same be dispensed with and it be heard *ex-parte* in the first instance owing to its urgency.
2. **THAT**, the Honourable Court be pleased to issue Permanent ORDERS of stay of execution pending *inter partes* hearing.
3. **THAT**, the Honourable Court be pleased to issue **Permanent ORDERS of Stay of Execution** pending *inter partes* hearing.
4. **THAT, in the alternative to Order 3**, the Honourable Court be pleased to issue **Temporary ORDERS of Stay of Execution** pending *inter partes* hearing.
5. **THAT**, this Honourable Court be pleased to stay the execution of the Judgement dated **17.11.20** and Decree of the Court pending the hearing and determination of the intended appeal.
6. **THAT**, this Honourable Court be pleased to make such further Orders to meet the end of justice.
7. **THAT**, costs of this application be in the intended appeal.

WHICH APPLICATION is supported by the Affidavit of **GENESIO KIRAITHE MPUNGU** and made on the

following **GROUNDS**:

1. **THAT**, the Advocates for the Respondents served us with a letter dated 17.11.20 demanding that we vacate from the property L.R NUMBER MUTHAMBI/EREGA/204 being 2.80 Acres within Fourteen (14) Days pursuant to the Judgment of the Court delivered on 17.11.20.
2. **THAT**, the Applicants are aggrieved by the whole of the Judgment of this Honourable Court made by Honourable Justice P.M Njoroge on 17.11.20.
3. **THAT**, the Applicants/Appellants being dissatisfied with the said judgment has filed a Notice of Appeal and letter requesting for typed proceedings.
4. **THAT**, the Applicants have an arguable appeal.
5. **THAT**, the Applicants will suffer substantial loss if the stay of execution is not granted.
6. **THAT**, the Respondents will not suffer any prejudice or damage that cannot be compensated by way of costs should the appeal be unsuccessful.
7. **THAT** the Applicants are ready to offer a security as a condition for stay of execution to be held in a joint interest earning account.
8. **THAT**, the Application has been made without unreasonable delay.

DATED at **NAIROBI** this 30TH day of **NOVEMBER 2020**

BIKUNDO & ASSOCIATES ADVOCATES,

ADVOCATES FOR THE APPLICANTS

2. The Application is buttressed by the affidavit of Genesio Kiraithe Mpungu, the 2nd applicant, which states:

SUPPORTING AFFIDAVIT

I, **GENESIO KIRAITHE MPUNGU** residing in Chuka, Muthambi Location within the Republic of Kenya, aforesaid do hereby make oath and state as follows: -

1. **THAT**, I am the 2nd Applicant herein and as such conversant with the material facts and proceedings of the matter herein, and I am therefore competent and duly authorised to swear this Affidavit on mine and the 1st Applicants behalf.
2. **THAT**, I am advised by our Advocates on record **Messrs BIKUNDO & ASSOCIATES ADVOCATES**, that the Judgment was entered in this matter by **Honourable Justice P.M. Njoroge** on **17.11.20** against the Applicants dismissing the suit with costs for our claim of **2.80 Acres** comprised in **Land Reference Number Muthambi/Erega/204**.
3. **THAT**, being dissatisfied with the said judgment, we intend to appeal against the decision by **Honourable Justice P.M. Njoroge** made on **17.11.20** Honourable and we have instructed our Advocates to file the intended appeal in the Court of Appeal.
4. **THAT**, we only managed to follow up with the registry and get a copy of the Judgement on **26.11.20** as our previous Counsel on record went mute on us and we were in the dark the whole time (*Annexed herewith is a copy of the said Judgement Pages 1-20*).

5. **THAT**, on **26.11.20** the Advocates for the Respondents/Defendants, through the Chief of Muthambi Area Location, caused to be served us a letter dated **17.11.20**, threatening to evict us from our only home and property being the **2.80 Acres** comprised in **Land Reference Number Muthambi/Erega/204** within **Fourteen (14) Days** from the date of the said letter (*Annexed herewith is a copy of the said Letter at Page 21*).
6. **THAT**, further, the eviction notice warns us to vacate the premises immediately and leave behind all the developments we have made on the land henceforth.
7. **THAT**, we are devastated by the abrupt and sudden notice to vacate a property where we have occupied, stayed, developed in terms of structures (a house, Cow Shed, Tea Plantation) and called home for the last **Forty Six (46) Years** (*Annexed herewith are copies of the Photos of the property at Pages 22-42*).
8. **THAT**, I have raised our children in that land and they are all grownups now and in fact, one my daughter Doreen Mpungu did her wedding at the said property on **14th August, 1999** and we have buried my father on the said property who died in the year **1998**.
9. **THAT**, I am now **74 Years** and being asked to vacate a property that I have stayed on with my family for **Forty Six (46) Years** within **14 days** is a great injustice and we are asking this Honourable Court to do Justice.
10. **THAT**, we have since filed a Notice of Appeal and Letter requesting for typed Proceedings and intend to Appeal against the entire Judgement of the
11. Court (*Annexed herewith is a copy of the Notice of Appeal and Letter requesting for proceedings Pages 43 to 44*).
12. **THAT**, I am advised by our said Advocates, which advice I verily believe to be true, that we, the Applicants have an arguable appeal with a likelihood of success.
13. **THAT**, our Advocates on record have advised us which advice we verily believe to be true that the Application has been brought without unreasonable delay and any delay was not occasioned by the Applicants whatsoever.
14. **THAT**, the Applicants are ready and willing to offer a security as a condition for stay of execution to be held in a joint interest earning account.
15. **THAT**, we are advised by our said Advocates that the Respondents will not suffer any prejudice or damage that cannot be compensated by way of costs should the appeal be unsuccessful.
16. **THAT**, I swear this affidavit in support of the Applicants application herein.
17. **THAT**, what is deposed to herein is true to the best of my knowledge, information and belief save wherein otherwise stated.

SWORN by the said **GENESIO KIRAITHE MPUNGU at CHUKA**

This 30TH day of NOVEMBER 2020

3. When the application came for ex parte hearing on 2nd December, 2020 Mr. Mutegi, for the applicant, urged the court to grant prayer No. 2 for stay of execution, the urgency of the prayer being that the applicant had been threatened with immediate eviction. Mr. Mutegi told the court that the applicant was willing to deposit with court a deposit for security.
4. I have considered the pleadings proffered herein and the submissions made by the applicants' advocate. At this ex parte stage, I issue the following orders:

- a) Prayer 3 for permanent stay of execution pending interpartes hearing of this application is denied.
- b) In the greater interest of Justice, a temporary conditional stay of execution is hereby granted **PROVIDED** that the applicant deposits with court as security a sum of Kenya Shillings Eight Hundred Thousand (Kshs.800,000/=) within 14 days of today **FAILING** which the conditional stay of execution granted herein will automatically lapse.
- c) The application to be properly served upon the respondents within 7 days of today.
- d) Interpartes hearing of the application on 16/12/2020.

Delivered in open Court at Chuka this 2nd day of December, 2020 in the presence of:

CA: Ndegwa

Evans Mutegi h/b Miss Muiruri for the Applicant.

P.M. NJOROGE

JUDGE

- 2. When the application was to be heard interpartes on 16th December, 2020, the applicant and his advocate did not come to court.
- 3. Mr. Mark Muriithi, representing the respondents, told the court that he had filed Grounds of opposition. They read as follows:

GROUND OF OPPOSITION

TAKE NOTICE that when the Notice of Motion application dated 30.11.2020 comes up for interpartes hearing, counsel for the defendants/respondents shall raise and urge the following grounds in opposition thereof:-

- 1. That the entire application as filed is fatally defective and bad in law as the final orders made in the judgment of 17.11.2020 are incapable of being stayed as they are negative in nature.
- 2. That the defendants/Respondents by issuing a demand letter requiring the plaintiffs/applicants to vacate the suit property were not pursuing the execution of any court orders capable of being stayed.
- 3. That prayers sought do not fall with the realm of the provisions of law cited.

REASONS WHEREFORE the defendants/respondents pray that the entire application be dismissed with costs.

DATED AT CHUKA THIS 15TH DAY OF DECEMBER, 2020

SIGN.....

FOR:M/S BASILIO GITONGA, MURIITHI & ASSOCIATES

ADVOCATES FOR THE DEFENDANTS

- 4. For non-attendance and non-prosecution of the application, Mr. Muriithi urged the court to dismiss the application.

5. The following orders are issued:

- a) This application is hereby dismissed.
- b) Costs are awarded to the respondents.

Delivered in open Court at Chuka this **16th day of December, 2020** in the presence of:

CA: Ndegwa

Applicants and advocates absent

Mark Muriithi for the respondents

P. M. NJOROGE,

JUDGE.



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