



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC APPEAL NO. 17 OF 2020

GEORGE AMBOGO MARIITA..... APPELLANT

=VERSUS=

LOISE MUTHONI NDERITU.....1ST RESPONDENT

PARAGON PROPERTY CONSULTANTS LIMITED..... 2ND RESPONDENT

RULING

1. The Appellant/Applicant filed a Notice of Motion dated 12th May 2020 in which he sought the following orders: -

1) Spent

2) Spent

3) That the Honourable court do stay the execution of the orders in Milimani CMCC 2196 of 2012 dated 30th April 2020 pending the hearing and determination of the Appeal.

4) That costs of this application be provided for.

5) Any such further orders as this Honourable Court may deem fit and just to grant in the circumstances.

2. The Applicant contends that he has preferred an appeal against the Judgement of Hon. A M Obura (Mrs) S.P.M delivered on 30th April 2020. The Appellant states that in the impugned judgement, he was ordered to move out of the suit property within six months failing which he would be evicted.

3. The Applicant states that he purchased the suit property from the Respondents in 2006. He took possession and constructed a secondary school called Immaculate Secondary School. He also put up a residential house where he stays with his family as well as other structures where the workers of the school reside. The Applicant contends that the appeal he has preferred has high chances of success and that if stay of execution is not granted, he would be evicted and this will render his appeal nugatory and subject him to substantial loss.

4. The court directed parties to dispose of the application by way of written submissions on 22nd June 2020. It is only the Applicant who filed submissions. The Respondents neither filed grounds of opposition nor replying affidavit or even submissions.

5. I have considered the Applicant's application as well as his submissions. In an application of this nature, the Applicant is supposed to demonstrate that the application was filed without unreasonable delay; that if stay is not granted, he will suffer substantial loss and that he has given such security as will be binding upon him in the decree.

6. In the instant case, the impugned judgement was delivered on 30th April 2020. This application was filed on 12th May 2020. I therefore find that there was no unreasonable delay in bringing the application.

7. The plaintiff has put up a secondary school on the suit property. There is also his residential house as well as other houses for the school workers. The Applicant had been given six months to move out or face eviction. If stay were not granted and the Applicant was to be evicted, he will suffer substantial loss and the appeal which he has filed will be rendered nugatory.

8. It has been held that substantial loss is the cornerstone to grant of stay. See **Kenya Shell Limited vs Benjamin Karuga Koinange & Another (1982-1988) KAR 161**. As the Applicant has demonstrated that he will suffer substantial loss, I find that this is a clear case where stay should be granted. I allow the application dated 12th May 2020 in terms of prayer (3) and (4). The Applicant shall deposit security for costs in court in the sum of Kshs.150,000/= within 45 days failing which the stay shall automatically lapse.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAIROBI ON THIS 22ND DAY OF MARCH 2021.

E.O.OBAGA

JUDGE

In the Virtual presence of:-

Mr Mokaya for Applicant

Court Assistant: Okumu

E.O.OBAGA

JUDGE