REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO. 465 OF 2015

SOUTH EASTERN KENYA UNIVERSITY.....APPELANT

VERSES

UKAMBANI AGRICULTURAL INSTITUTE LIMITED.....1ST RESPONDENT

NATIONAL BANK OF KENYA LIMITED.....2ND RESPONDENT

AND

STEPHEN NDAMBUK MULI.....1ST APPLICANT

ERIC MUTINDA MUTISYA.....2ND APPLICANT

RULING

1. The application dated 20th November, 2018 seeks orders **that this Honourable Court be pleased to stay further proceedings and/or issuance of warrants of arrest against the Applicants pursuant to their conviction on 17th day of October, 2018 pending the hearing and determination of the appeal.**

2. The application is predicated on the grounds stated therein and is supported by affidavit's sworn by Eric Mutinda Mutisya, the General Secretary of the Applicant, Ukambani Agricultural Institute. It is averred that the Applicants were convicted of contempt of court on 17th October, 2018 and soon thereafter obtained copies of the proceedings and ruling and filed an Appeal. It is contended that the Appeal has high chances of success but that the Appeal stands to be rendered nugatory as the Applicants may end up being imprisoned or fined.

3. The application is opposed. It is stated in the replying affidavit that on 29th September, 2016 the Applicants were found to be in contempt of court and are liable for punishment. That the Applicants have continued being in contempt of court as they have failed to return the title documents to the bank and that therefore there is a likelihood that the title documents the subject of the suit may be utilized in a fraudulent manner to either obtain a bank facility or transfer the property. It is further contended that the Appeal by the Applicants has no chances of success

4. I have considered the application, the reply to the same and the submissions made by the respective counsel for the parties.

5. The background to the application at hand is that the Appeal herein was filed by the Appellant, Eastern Kenya University. Subsequently, the application dated 4th December, 2015 was filed seeking orders **that pending the hearing and determination of the appeal herein the 1st Respondent be restrained by way of an injunction from in any way parting with possession of, presenting or lodging the title documents in respect of L.R. No. 209/10350 or selling or transferring the said property.**

6. Secondly, the application sought orders **that pending the hearing and the appeal herein the 1st Respondent be ordered to forthwith return the title documents to M/s national Bank of Kenya for safe keeping.**

7. The application was heard and allowed on 29th September, 2016 as per the ruling herein. Thereafter, the application dated 13th February, 2017 was filed. The said application sought orders that the Applicants (as the chairman and Treasurer of the 1st Respondent) be committed to civil jail for disobedience of court orders. The said application was allowed on 17th October, 2018 and Warrants of Arrest issued. That is

what has triggered the application at hand.

8. It is noteworthy that the ruling of this court dated 29th September, 2016 restraining the 1st Respondent herein from parting with possession of the title documents, selling or transferring the suit property and handing over the title document to the 2nd Respondent National Bank of Kenya for safe keeping have not been appealed or reviewed. However, the application at hand is a consequence of the said orders which led to the application for contempt of court and the orders sought to be stayed in the instant application. This court's view is that allowing a stay of the proceedings herein would in the circumstances be tantamount to countenance of continued contempt of court.

9. Under Order 42 Civil Procedure Rules which the Applicants have relied on, substantial loss is the cornerstone of applications for stay of execution. In the case at hand, no substantial loss can be suffered in lawful execution of the court orders which are based on the orders herein dated 29th September, 2016.

10. With the foregoing, I find no merits in the application and dismiss the same with costs.

Date, signed and delivered at Nairobi this 30th day of Jan., 2020

B. THURANIRA JADEN

JUDGE