



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

CIVIL APPEAL NO. 7 OF 2019

EZEKIEL KIPRONO LAMAI.....APPELLANT

VERSUS

LAWRENCE KIBOR NGANAI.....RESPONDENT

RULING

[NOTICE OF MOTION DATED 20TH FEBRUARY, 2019]

1. The Appellant, seeks for stay of execution of the judgment and Order of the Chief Magistrate, Environment and Land Court at Eldoret of 22nd January, 2019 pending the hearing and determination of the appeal, through the Motion dated the 20th February, 2019. He also prays that costs be in the cause. The application is based on the nine (9) grounds on its face marked **(1)** to **(9)**, and supported by the affidavit sworn by the Appellant on the 20th February, 2020. The Appellant's case is that the Respondent filed ***Eldoret Chief Magistrate Environment & Land Case No. 16 of 2018*** against him, and an award of 0.4 acres has been made against him (Appellant). That the Appellant is the registered owner of ***Nandi/Kamoiywo/2133*** and has invested millions in building his house and maintaining the land. That the Respondent has served him with an eviction notice. That unless a stay is issued, the suit land will be squandered. That he had sold 6.4 acres, and not 0.4 acres of Nandi/Kamoiywo/2133. That he has filed the appeal vide the Memo dated 18th February, 2019.

2. The Respondent opposed the Motion dated the 20th February, 2019 through his replying affidavit sworn on the 22nd June, 2020. It is the Respondent's case that the judgment of 28th November, 2016 was entered pursuant to the parties' consent and cannot be set aside and or interfered with without the parties' consent. That the appellant has declined to vacate from the 6.5 acres and it is only fair for him to do so, and thereafter status quo be maintained pending the determination of the appeal. That as the Appellant does not reside on the 0.4 acres, he does not stand to suffer loss and damage. That the application is poorly pleaded, lacks merit and should be dismissed.

3. The Court gave directions on filing and exchanging written submissions on the application on the 6th May, 2020. That during the subsequent mention of the 13th July 2020, only Counsel for the Respondent attended, and he moved the Court to write its ruling on the documents filed.

4. The issues for determinations by the Court are as follows;

(a) Whether the Appellant has made a case for the issue of stay of execution order, pending the hearing and determination of Eldoret ELCA No. 7 of 2019.

(b) Who pays the costs of the application?

5. The Court has after considering the grounds on the Motion, the supporting and replying affidavits come to the following conclusions:

(a) That the copy of the judgment in Eldoret Chief Magistrate's Environment & Land Case No. 16 of 2018, attached to the supporting affidavit and marked **"EKI"** clearing confirms that the judgment is dated the 22nd January, 2019 which is taken as the date of its delivery. That the Motion herein dated the 20th February, 2019 was therefore filed within one month from the date of the judgment. The Appellant therefore moved without unreasonable or inordinate delay in filing the application.

(b) That the Appellant at ground 6 of the application, and paragraphs 8 and 9 of the supporting affidavit, has stated that he is the registered owner of the suit land. That deposition has not been challenged or rebutted by the Respondent through the replying affidavit. That indeed, the judgment in Eldoret Chief Magistrate's Environment & Land Case No. 16 of 2018 confirmed that fact in affirming the validity of the sale agreement produced as **Exhibit P4**. That as the Respondent has shown his interest in reportedly

executing the Lower Court's judgment that found in his favour over the 0.4 acres portion of the suit land, it is only fair and just the execution of the judgment of 22nd January, 2019 and or order emanating thereof, be stayed pending the hearing and determination of the filed appeal.

(c) That in view of the Lower Court's order on costs, it is reasonable that the costs of this application abide the outcome of the appeal.

6. That flowing from the foregoing, the Court finds merit in the Motion dated the 20th February, 2019 and orders as follows;

(a) That an order of stay of execution of the judgment and order issued in Eldoret Chief Magistrate's Environment & Land Case No. 16 of 2018 on the 22nd January, 2019 is hereby issued pending the hearing and determination of the pending appeal.

(b) The costs of this application to abide the outcome of the appeal.

Orders accordingly.

Delivered virtually and signed at Eldoret this 30th day of September, 2020

S. M. KIBUNJA

JUDGE

In the presence of:

Appellant: No appearance.

Respondent: No appearance.

Counsel: M/s Karuga for Appellant

Court Assistant: Christine

and the ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.