REPUBLIC OF KENYA

IN THE HIGH COURT

AT NAKURU

CIVIL CASE NO.110 OF 1998

HARRISON MWANGI NYOTA.....PLAINTIFF/APPLICANT

-VERSUS-

NAIVASHA MUNICIPAL COUNCIL]

EDDY KAMAU]

CHRISTOPHER M. KAMAU]

MAGARET WANJIRU AND 17 OTHERS]....DEFENDANTS/RESPONDENTS

RULING

The applicant Harrison Mwangi Nyota by his **application dated 18th January 2019 seeks an order to stay execution** of the court's decree from the judgment delivered on the 20th December 2018 (Wendo J) pending hearing and determination of the Appeal dated 24th December 2018 and filed on the 7th February 2019.

I have seen the decree issued on the 12th April 2019.

It reads

> "**The plaintiff's suit is dismissed with costs to the defendants, and that**
>
> ***(a) A declaration do issue that issuance of Leasehold title Naivasha/Municipality Block 5/235 to the plaintiff is illegal, fraudulent and a nullity.***
>
> ***(b) A declaration that the defendants are the legal owners of the suit land and a perpetual injunction is hereby issued to refrain the plaintiff from;***
>
> ***(c) A declaration that the plots emanating from subdivision of Block 5/235 i.e Black 5/ 346-363 are illegal and are hereby cancelled and the plots revert back to the numbers indicated in the respective allotment letters to the twenty defendants.***

The *status quo* obtaining during hearing of the suit is that the plaintiff/applicant was in possession of the suit land parcel and there are no developments on the land as there was an injunction against any developments thereon.

The applicant seeks an order of *status quo* to continue upto the hearing and determination of the Appeal.

The application is opposed by a replying Affidavit sworn by Christopher Kamau, one of the Respondents.

I have considered the grounds supporting the application and in opposition.

What the applicant seeks is to preserve the nature of the land as execution of the decree would cause cancellation of the titles and the sub–titles pursuant to subdivisions of the same. There is no doubt that execution will change the character and current ownership.

The cornerstone of an application for stay of execution is irreparable loss to the applicant if the order is denied. Proof of the loss must be demonstrated – Under **Order 42 rule 6(1) CPR**.

In a matter of land, the land itself remains as the security, so that if its character and ownership are changed, it would cease to be sufficient security. Thus condition No.(b) of Order 42 rule 6 (1) are satisfied as well as (a), the application no doubt has been brought timetiously.

In the case **James Wangalwa & Another –vs- Agnes Naliaka Chese, Bungoma HCC Misc. Appl. NO. 42 of 2011,**

> ***"The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect to negate the very essential core of the applicant as the successfully party in the appeal. This is what substantial loss would entail…"***

There is no doubt that if the decree is executed, the title to the land will be cancelled, and the subdivisions and the sequel subtitles will also be cancelled. Should the appeal be successful the whole process that involves the Land Registrar and other agencies will be called upon to once again reverse the process.

In my view, a denial of the stay order would cause more substantial loss and prejudice to the applicant than if it is denied. The land must be preserved.

To that extent, I find the application merited. **I proceed to allow the same with an order that the *status quo* on the ground shall be observed, that no developments on the land parcel and its subdivisions should be undertaken by either the applicant or those who claim under him pending hearing and determination of the appeal.**

The costs of the application will abide the outcome of the appeal. It is so ordered.

Delivered, Signed and dated at Nakuru this 25th Day of July 2019.

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J.N. MULWA

JUDGE