



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT BOMET

HIGH COURT CIVIL CASE NO. 2 OF 2017

BOMET TEACHERS TRAINING COLLEGE.....PLAINTIFF

=VERSUS=

BANK OF KENYA.....DEFENDANTS

RULING

The application dated 7th November 2017 seeks the following orders:-

1. Spent
2. That this court do grant a stay of the orders given on 31st day 2017 pending the hearing and determination of this application.
3. That the court be pleased to grant a stay of the orders given on 31st July 2017 pending the hearing and determination of the intended appeal.

1.The grounds are that

1. This court delivered a ruling dated 31st July 2017 in which it dismissed the plaintiff application dated 16th March 2017.
2. That the applicant being dissatisfied with the said decision has filed a notice of appeal and has requested for certified copies of the proceedings.
3. That the suit property is due for sale by public auction on 22/12/2017.
4. That the appeal has high chances of success and if execution is carried out it will render the appeal nugatory.
5. That there is no delay in bringing up the application.

2. That application is opposed on the grounds:-

1. That there is no attached order subject matter of the application.
2. That there is no evidence of an appeal produced to this honourable court.
3. The application seeking stay of a dismissal order its untenable in law as same is not a positive order capable of execution.
4. That the application is an abuse of court process, the plaintiff having filed previously two different applications for injunction in different suits and which all applications were dismissed.

In the case of ***Peter Gacheche –V- AG (Civil Appeal No. 24 of 2014)***. It was held that there are twin principles for the grant of stay orders.

1. That the appeal must be shown to be arguable.

2. That if the appeal if successful, shall be rendered nugatory if stay is not granted.

In the present case, there is a Notice of Appeal filed. However, there is no indication as to whether there is an appeal filed in court.

The court rendered its ruling dated 31st day of July 2017 and in which it observed at paragraph 2 page 6. I have perused Bomet HCC No. 2 of 2015. The parties are the same as in the present suit No. 2 of 2017. ***Bomet Teachers Training Vs Bank of Africa Kenya Ltd.*** The prayers sought are the same which are injunctive orders over the sale by the Defendant of LR. No. Bomet Township/114. The court dismissed the application for being ***Res Judicata.***

It is the same ruling ostensibly which is being appealed from. The appeal if any is not arguable. This court dismissed an application for an injunction with costs. There is nothing to stay. If stay is not granted will the appeal be rendered nugatory? The land subject matter of sale by public auction can be valued as required by law. The applicant can be adequately compensated by way of damages in the event he succeeds in his suit.

This application has no merit and it is dismissed with costs.

Ruling delivered dated and signed in open court this 29th day of January 2017 in open court and in the present of learned counsel for the applicant Mr. Mitey absent learned counsel for the Respondent Mrs. Korir holding brief Miss Kosgey

Court assistant Rotich.

M. MUYA

JUDGE

29/1/18

Parties be furnished with certified copies of the ruling.

M. MUYA

JUDGE

29/1/18