



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT EMBU

HCA NO. 27 OF 2016

(FORMERLY EMBU E.L.C. NO. 280 OF 2015)

ALFRED NJERU MURUANGUGI.....APPLICANT

VERSUS

DORIS MUTHONI KAGAL.....RESPONDENT

R U L I N G

Following the judgment in this appeal delivered by Bwonwonga, J on 19/07/2016, the applicant/appellant brought this application dated 27/07/2016 seeking for the following orders:-

“That pending hearing and determination of the intended appeal, an order do issue restraining and prohibiting the respondent ..from dealing in any manner whatsoever, including disposing or interfering with L.R. GATURI/WERU/4551,4552 and 4553”.

The grounds supporting the application are that the applicant was dissatisfied with the judgment of the court in this appeal and has now filed a notice of appeal. The certified copies of proceedings and judgment have been applied for but not yet supplied for purposes of the intended appeal. It is further stated that the respondent is likely to enter into the suit lands which are in the possession of the applicant and interfere with them at the detriment of the applicant.

Finally, it is argued that the applicant has an arguable appeal with high chances of success.

The respondent filed grounds of opposition on 09/08/2016 in which he contended that the application was incompetent, a waste of the court's time and that it had been overtaken by events since there are not suit lands such as indicated on the application. It was also stated that no loss is likely to be suffered by the applicant if the orders sought are denied.

The application was argued by way of submissions which I have perused. The issues that arise for determination in this application are as follows:-

a. Whether the application is competent;

b. If it is found to be so, whether the applicant is entitled to the orders sought.

This application is brought under Order 40, Rule 1, Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules.

Order 40 deals with temporary injunctions and interlocutory orders. The prayers are for orders for preservation of property pending hearing and determination of the case or of the appeal. The application before me arises from an appeal which has been finalized. The applicant refers to an intended appeal which can only be filed in a higher court being the Court of Appeal.

It is my considered opinion that the prayer for an injunction against the respondent who won the appeal is misplaced, bad in law as well as spiteful.

I am surprised that the application was filed by the applicant's counsel who is well versed with the provisions of the law and yet it leaves a lot to be desired.

In his submissions the applicant's counsel has put up arguments in support of an application for stay pending appeal. Although Order 42 Rule 6 has been cited on the sub-heading of this application, there is no prayer for stay pending appeal herein. The submissions are also totally misplaced and not relevant to the application before me.

Assuming the applicant wanted Orders for stay pending appeal, he ought to have approached the Court of Appeal under Order 85 of the Court of Appeal Rules. Under the Court of Appeal rules, the court where an appeal from the High Court lies is defined as the Court of Appeal. It is my considered view that the High Court having dealt with the appeal from the lower court has no power to entertain any further applications dealing with an intended appeal.

I reach a conclusion that this application is incompetent, bad in law and is against the overriding objective in efficient and economic use of Judicial resources.

I hereby dismiss the application with costs.

I hereby direct that the Counsel of the applicant meets the costs of this application for reasons explained herein.

It is hereby ordered.

DATED, SIGNED AND DELIVERED AT EMBU THIS 24TH DAY OF SEPTEMBER, 2018.

F. MUCHEMI

JUDGE