



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL DIVISION

HIGH COURT CIVIL APPEAL NO.491 OF 2014

MARGARET WAITHIRA NJARI.....APPELLANT/RESPONDENT

VERSUS

JOHN NJARI KAGUNYI.....RESPONDENT/APPLICANT

RULING

1. The application dated 10th March 2016 seeks orders that:

“1.That the appeal be summarily dismissed

ALTERNATIVELY:

2. That the orders of injunction be declared as having lapsed.

3. That costs of this application be provides for.”

2. The application is premised on the grounds set out in the application and is supported by the affidavit of John Njari Kagunyi, the Applicant herein. The Applicant’s complaint is that orders of injunction were allowed herein on 20th February, 2015. That since then the Respondent has not taken any steps to prepare the record of appeal and have the appeal admitted. It is further stated that this is a land matter and ought to be heard by the Environmental and Land Court.

3. The application is opposed. The Respondent blames the delay herein on the lower court failure to provide her with the certified copies of the proceedings and judgment despite her request.

4. During the hearing of the application, the learned counsel for the parties opted to file written submissions. I have duly considered the same.

5. An appeal can be summarily rejected under Section 79B of the Civil Procedure Rules which provides as follows:

“Before an appeal from a subordinate court to the High Court is heard, a judge of the High Court shall peruse it, and if he considers that there is no sufficient ground for interfering with the decree, part of a decree or order appealed against he may, notwithstanding section 79C, reject the appeal summarily.”

6. From the record of the lower court, it is clear that the proceedings were typed and thereafter certified on 6th November, 2015. The application at hand was filed on 15th April, 2016. The Respondent was not diligent.

7. The temporary orders of injunction were granted herein on 20th February, 2015 pending the hearing and determination of the appeal. Order 40 rule 6 Civil Procedure Rules provides as follows in respect of such orders:

“Where a suit in respect of which an interlocutory injunction has been granted is not determined within a period of twelve months from the date of the grant, the injunction shall lapse unless for any sufficient reason the court orders otherwise.”

8. It is noted that the appeal herein emanates from orders made by the lower court following the adoption of the award of the Land Disputes Tribunal. The subject matter is land. The appeal ought to be heard in a court of competent jurisdiction.

9. With the foregoing, the application is dismissed with costs in cause. The file is hereby transferred to the Environmental and Lands Court.

Dated, signed and delivered at Nairobi this 25th day of July, 2017

B. THURANIRA JADEN

JUDGE