



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. E113 OF 2021

REUBEN KINOTI KANAKE.....APPELLANT

VERSUS

EUNICE KARAMBU (Suing on behalf of the estate of JAMES MUNENE).....RESPONDENT

RULING

1. By an application dated 19.10.2021 the applicant prays for stay of execution pending hearing and determination of his appeal. The application is supported by an affidavit sworn on the even date by Reuben Kanake.
2. The grounds are that he is the one in possession of the suit land, execution is imminent and if it occurs the appeal shall be rendered nugatory.
3. The application is opposed through a replying affidavit sworn on 4.11.2021. The first ground is that the appellant has never settled on the suit land but was merely disturbing peace and that the land is bare land mainly used for farming.
4. Secondly the respondent says she shall be prejudiced more if she is stopped from accessing her farms which she has been utilizing since 2015.
5. Thirdly the respondent urges the court to find the applicant wants to use the orders sought to enter the land yet the surveyor's report indicates otherwise.
6. Mr. Mutegi advocate made oral submissions on behalf of the appellant. **Order 42 Rule 6 of the Civil Procedure Rules** mandates a party seeking for stay to disclose substantial loss, file the application within reasonable time and there be demonstration of security for the due performance of the decree should the appeal fail.
7. The judgment complained about was delivered on 7.10.2021 while this application was duly filed on 21.10.2021. To my mind the applicant moved with speed to apply for the stay of the decree hence there was no inordinate delay.
8. Turning to the issue of substantial loss, a party claiming it must demonstrate the same through cogent and empirical evidence. The fact that there is an impending execution is not clear demonstration of substantial loss since execution is a regular and a legal process which is a matter of right for the successful litigant.
9. There is no indication in the supporting affidavit how the appellant has been in occupation of the suit land and the manner he was likely to be prejudiced if the subject land is taken over by the respondent.
10. Secondly the respondent has stated the land is not occupied by the appellant as alleged or at all.
11. Thirdly the lower court decision states the appellant was claiming ownership of **Parcel No. 3924** whereas the respondent's land is **Parcel No. 3925**.
12. There is no indication that the respondent is about to substantially interfere or dispose of the suit land so as to defeat the outcome of the appeal or its substratum for that matter.
13. Fourthly, the appellant has not offered any security for the due performance of the decree should the appeal not succeed.

14. Lastly the court has also to look at the interest of justice under **Sections 1A and 1B of the Civil Procedure Act** and **Article 159 of the Constitution**.

15. In my considered view and given the circumstances of this matter, I find it would not be in the interest of justice to grant the orders of stay. The application lacks merit and is hereby dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 26TH DAY OF JANUARY, 2022

IN PRESENCE OF:

NO APPEARANCE FOR PARTIES

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE