



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 22 OF 2019

JOSEPH MWANGI GATIMU.....1ST RESPONDENT/APPLICANT

WACHIRA GATIMU.....2ND RESPONDENT/APPLICANT

MICHAEL WANJOHI GATIMU.....3RD RESPONDENT/APPLICANT

GRACE KAGUU KARANI.....4TH RESPONDENT/APPLICANT

LILIAN WANGITHI GATIMU.....5TH RESPONDENT/APPLICANT

BENSON KINYUA GATIMU.....6TH RESPONDENT/APPLICANT

DALMAS MACHARIA GATIMU.....7TH RESPONDENT/APPLICANT

VERSUS

JOSEPH KARIMI MAGANJO.....1ST APPLICANT/RESPONDENT

MICHAEL KARUBIU MAGANJO.....2ND APPLICANT/RESPONDENT

RULING

The Applicant vide a Notice of Motion dated 15th December, 2020 is seeking the following orders;

1) That there be a stay of further proceedings in this Kerugoya Environment and Land Case Number 22 of 2019 pending the outcome of Court of Appeal Application Number 116 of 2020 for leave to appeal out of time.

2) That the costs of this application be provided for.

The application is premised on grounds shown on the face of the said application supported by an affidavit of the applicant sworn the same date. The Applicant's affidavit evidence is to the effect that after this Court dismissed his application dated 13th November 2019 on 05th June 2020, he filed a Notice of Appeal in exercise of his undoubted right of Appeal to the Court of Appeal at Nyeri and served the advocate for the respondent on 22nd June, 2020. He believes that a very fundamental issue will have to be determined in his intended appeal which necessitates stay of proceedings order sought. He believes that the respondent will not be prejudiced if the application is allowed.

The respondents did not file any response to the said application. However, when the application came up for hearing, the parties agreed by consent to have the same canvassed by way of written submissions.

Applicants Submissions

In his submissions dated 27/05/2021, the Applicant argued that he filed an application to have the Originating Summons in respect of ELC Number 22 of 2019 struck out for not disclosing a reasonable cause of action but this Honourable Court dismissed the application which aggrieved him and filed a Notice of Appeal at the Court of Appeal at Nyeri. He submitted that the Court of Appeal is yet to set down the said appeal for hearing. He argued that the Court of Appeal normally sets dates for the cases before it and that there has been a problem in the registry due to unavailability of the Judges and the Corona Epidemic. He submitted that if the suit (O.S) proceeds to hearing, his application and the intended Appeal will be rendered nugatory.

The respondents through the firm of MAGEE WA MAGEE submitted that the current application seeking stay of proceedings has no legs to stand on and should be dismissed with costs. The respondents also submitted that the application allegedly filed by the applicant before the Court of Appeal as shown in a copy annexed to the supporting affidavit was not made under certificate of urgency and that the applicant merely intends to delay the fair determination of the suit herein.

The learned counsel further submitted that the applicant intends to appeal against one order not the final orders of the Honourable Court where the Court had merely declined to dismiss the suit herein and that it is clear that even in the unlikely event that the applicant's appeal would succeed, the same would not be rendered nugatory even if the suit herein would have proceeded. In conclusion, the respondent's counsel submitted that KERUGOYA C.M. SUCCESSION CAUSE 378 OF 2016 was stayed pending the hearing and determination of the suit herein and that it would be an abuse of the court process for the applicant to pray for stay of the proceedings herein.

Analysis and Determination

I have considered the Notice of Motion dated 15th December, 2020 and the supporting affidavit. I have also considered the annexures thereto as well as submissions by the rival parties. The application which the applicant preferred an appeal to the Superior Court at Nyeri being C.A. NO. 116 OF 2020 emanates from an order by this Honourable Court declining to dismiss the suit herein. The order is a result of one interlocutory application and not the final orders of this Court. I agree with counsel for the respondent that even in the most unlikely event that the applicant's Appeal succeed and this suit proceeds to full hearing, the same would not be rendered nugatory. I also note that the proceedings in the Chief Magistrate's Court in Succession Cause Number 378 Of 2019 (Kerugoya) had been stayed pending the hearing and determination of this suit. It would therefore be an abuse of the court process and against the overriding objective of the *Civil Procedure Act* and the rules made thereunder to order for a further stay of proceedings in this case.

The upshot of my findings is that the Notice of Motion dated 15th December, 2020 lack merit and the same is hereby dismissed with costs to the Plaintiff/Respondents.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 21ST DAY OF JANUARY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

IN THE PRESENCE OF:-

- 1. MS NDUNGU HOLDING BRIEF FOR MR. MAGEE FOR RESPONDENT**
- 2. 1ST APPLICANT – PRESENT**
- 3. 2ND APPLICANT – ABSENT**
- 4. KABUTA, COURT CLERK – PRESENT.**