



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

Elc Civil Case No.156 Of 2013

PETER KAMAU NJAU.....PLAINTIFF/APPLICANT

=VERSUS=

EMMANUEL CHARO TINGA.....DEFENDANT/RESPONDENT

R U L I N G

1. The Application before me is dated 29th March, 2016. In the Application, the Plaintiff is seeking for the following order:-

(a) Pending hearing and determination of the intended appeal in this suit the Hon. Court be pleased to issue an order of stay of execution of decree issued on 18th March, 2016.

2. The Plaintiff's Application is premised on the grounds that the Applicant intends to file an appeal against the Judgment of this court; that unless the orders sought are granted, the Applicant's Appeal shall be rendered nugatory and that the intended appeal has high chances of success.

3. The Plaintiff deponed that unless the orders sought are granted, he shall suffer substantial loss because he will not be able to recover the suit property.

4. In his Replying Affidavit, the Defendant deponed that the Application is defective because it is premised under Order 45 Rule 1 of the Civil Procedure Rules which provides for a review.

5. The Defendant has further deponed that the Application is meant to delay and frustrate him in the enjoyment of the fruits of the judgment and that the Applicant has not offered any security.

6. In his submissions, the Plaintiff's advocate submitted that the Defendant shall not suffer any prejudice because he is the one on the ground; that the Respondent may dispose of the suit properties and that this court should protect the Applicant's interest by issuing the orders sought.

7. The Defendant's/Respondent's counsel submitted that the Application is defective because it has been brought under the wrong provisions of the law; that the Application is meant to slow down the wheels of justice and that the Applicant has not shown the substantial loss that he shall suffer if the orders are not granted.

8. Counsel submitted that it is the Plaintiff to show that substantial loss would occur and that the Defendant cannot compensate him; that the Plaintiff has not shown the substantial loss that he shall suffer

that cannot be compensated in damages and that in any event, the Plaintiff has not offered any security.

9. The Plaintiff is seeking for the stay of execution of the Judgment of this court.

10. Order 42 Rule 6(2) of the Civil Procedure Rules provides that no order of stay of execution shall be made unless the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the Application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree as may ultimately be binding on him has been given by the Applicant.

11. In the case of **Machira T/A Machira & Co. Advocates Vs East African Standard (No2) (2002) 2 KLR 63**, the court held that for a party to succeed in an Application for stay of execution pending appeal, he must satisfy the court on affidavit or other evidential material that substantial loss may result.

12. The court in Machira case (supra) went further to state that it is not enough for the Applicant to merely state that substantial loss will result. He must provide specific details and particulars.

13. There is no evidence before me to show that the suit property may be wasted unless the orders of stay are granted.

14. Indeed, in his submissions, the Applicant's advocate has conceded that it is the Defendant who is in possession of the suit property.

15. Consequently, failure to grant the applicant the orders of stay will not prejudice him because he is not in possession of the suit property. The Applicant will have the land handed over to him if he succeeds in his Appeal.

16. In the circumstances, I find that the Applicant has not satisfied the requirements of Order 42 Rule 6(2) of the Civil Procedure Rules for the grant of an order of stay of execution pending the hearing of the intended appeal.

17. For those reasons, I dismiss the Application dated 29th March, 2016 with costs.

Dated, signed and delivered in Malindi this 22nd day of **July**, 2016.

O. A. Angote

Judge