



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. E114 OF 2021

M'ITABARI MUTUARUCHIU.....1ST APPELLANT

NAMAN MUTWIRI2ND APPELLANT

VERSUS

JEREMIAH KIRAMBURI.....RESPONDENT

RULING

1. Through an application dated 25.10.2021 the applicant seeks for stay of execution of the judgment delivered on 7.10.2021 pending hearing and determination of this appeal.
2. The application is supported by an affidavit sworn on 25.10.2021 by Naman Mutwiri.
3. The grounds are that the 2nd appellant risks being evicted from **L.R No. Kiegoi/Kinyanka/2228** despite his extensive developments thereon since 2006 hence he risks to suffer irreparable damage.
4. Further the applicant states he has filed the application without unreasonable delay and is ready to offer a reasonable security.
5. The respondent opposes the application through a replying affidavit sworn on 29.11.2021. He states the application is a delaying tactic aimed at denying him enjoyment of his fruits of judgment out of inheritance since adoption of the award by the court in 2011 and which award has not been appealed against.
6. Secondly the respondent avers the award was acted upon by the Land Registrar giving forth to **L.R No. Kiegoi/Kinyanka/2949** in his name.
7. Third the respondent states he has been rendered a destitute, landless and hence the court should to safeguard his rights as a registered owner who is entitled to vacant possession where he can settle his family.
8. Further the respondent by written submissions dated 29.11.2021 insists he holds a title deed to the property with attendant rights protectable under **Section 24 (a)** of the Land Registration Act. He relies on **MMG –vs- J.G aka JMG & Another [2018] eKLR.**
9. **Order 42 rule 6** of the **Civil Procedure Rules** requires a party seeking for stay of execution to demonstrate he has filed the application without unreasonable delay; that there will be substantial loss and damage if the orders of stay are not granted and lastly his readiness to offer security for the due performance of the decree should the appeal not succeed.
10. At issue in the lower court was **Parcels No. L.R No. Kiegoi/Kinyanka/2949** which DW3 confirmed it belonged to the respondent. The same is in the name of the respondent together with a title deed. The appellant has a duty to bring cogent and sufficient evidence to demonstrate substantial loss. It is not enough to state there will be irreparable loss and damage.
11. The court has issued two decrees over the suit land, the first one which has not been appealed against by the appellants. The respondent has a regular decree hence it cannot be said the impending eviction would be illegal.
12. Further the appellants have not demonstrated the respondent would change the subject land so as to affect the substance of the appeal
13. Coming to the issue of security, the appellants have not stated the security they are willing to offer in the event the court were to grant the orders sought. Whereas the 2nd appellant testified he had a title deed for the same piece of land and pleaded the merger was illegal, he did not produce such a title deed before the lower court and or pose any questions alleging fraud, illegalities and or collusion when DW3 to

testified.

14. In the circumstances, my finding is the appellants have failed to sufficiently demonstrate any substantial loss and or offer any security for the due performance of the decree.

15. As regards **Sections 1 A, 1B and Article 159** of the **Constitution**, the court is also expected to look at substantial justice. In this case, it is admitted there exists a regular award since 2006 which culminated into a title deed in favour of the respondent. It has not been appealed against.

16. Consequently, it would not be in the interest of justice to deny the respondent enjoyment of his fruits of judgment.

17. Given the foregoing the application lacks merit and is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 19TH DAY OF JANUARY, 2022

IN PRESENCE OF:

KIETI FOR HARON GITONGA FOR APPELLANTS

RESPONDENT PRESENT

COURT ASSISTANT - KANANU

HON. C.K. NZILI

ELC JUDGE