

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 59 OF 2013

RICHARD KIPROTICH KENDUYWO PLAINTIFF

VERSUS

DANIEL MUCHANGA NYUKURI..... DEFENDANT

RULING

The applicant Daniel Muchanga Nyukuri filed a notice of Motion dated **19.8.2015** in which he seeks order of stay of execution arising from a judgment delivered by this court on **7.7.2015**. The applicant contends that he has preferred an appeal to the Court of Appeal against the said judgment.

The application was duly served upon the respondent who neither filed grounds of opposition nor replying affidavit. The applicant states that he has been on the suit lands since 1988 and has done substantial developments on the properties. He stays on one of the properties and has constructed rental houses on the other properties. He annexed photographs showing some permanent buildings. He therefore contends that he will suffer substantial loss if stay pending appeal is not granted.

I have considered the applicant's application as well as the annexures to the supporting affidavit. Under Order 42 of the Civil Procedure rules, an applicant is required to demonstrate that he has filed the application for stay without unreasonable delay. He has also to demonstrate that he will suffer substantial loss if stay is not granted. Lastly an order for security for due performance from the decree as may ultimately be binding on him should be given.

In the instant case, the applicant has demonstrated that he has filed a notice of Appeal against the court's judgement. The judgement in this case was delivered on **7.7.2015**. The application for stay was made on **19.8.2015**. This is a period of slightly over one month. I do not find this delay to be unreasonable. The applicant had to engage the services of another lawyer for appeal purposes. This may have caused the little delay in bringing up this application.

The next issue for consideration is whether the applicant has demonstrated that he will suffer substantial loss. The applicant has stated that he has been on the suit lands since 1988. He has established a home on one of the properties and has put up rental premises on the other plots. He has annexed photographs of the houses which are permanent. It is clear that the applicant will suffer substantial loss if he is evicted and the permanent houses demolished. I therefore find that the applicant has demonstrated that he may suffer substantial loss should stay of execution be rejected.

This is a clear case where the applicant has to provide security. I order that the applicant do deposit in court a sum of kshs.100,000/= (One hundred thousand) within seven days from today failing which the stay orders will automatically lapse. Costs shall abide the results of the appeal.

It is so ordered.

Dated, signed and delivered at Kitale on this 17th day of September 2015.

E. OBAGA

JUDGE

In the presence of M/S Arunga for applicant. Court Assistant - Winnie.

E. OBAGA

JUDGE

17.9.2015