



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KAJIADO**

**ELC CASE NO. 8 OF 2019**

**PRISCILLAH KIPITO KAREI DAGOME.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH KENTO.....2<sup>ND</sup> PLAINTIFF**

**(Suing as legal representatives of Karei Ole Dagome)**

**-VERSUS-**

**SPORTS CHAMPION LIMITED.....DEFENDANT**

**RULING**

This ruling is on the application dated 8/6/2021 which has one main prayer namely;

*(2) The Honorable court be pleased to and hereby stay its proceedings pending the outcome of civil appeal no. E279 of 2021 at the Court of Appeal.*

The grounds for seeking a stay of proceedings are that the Defendant has an arguable appeal that may be rendered nugatory to his prejudice.

The appeal by the Defendant is against the ruling dated 15/3/2021 where the Court dismissed the Defendant's application dated 14/10/2020 which had sought to dismiss this suit on the ground that it was time barred.

This Court dismissed the Defendant's Notice of Motion on the ground that **Section 26** of the **Limitation of Actions Act** applies to this case which means that limitation does not apply as the case relates to fraud.

The Notice of Motion is opposed by the Plaintiff whose counsel has filed eight grounds of opposition which include that the stay is prejudicial to the Plaintiff and the Defendant still has another chance to appeal in the event that the Court finds in favour of the Plaintiff.

Counsel for the parties filed written submissions on 16<sup>th</sup> December, 2021 and 26<sup>th</sup> January, 2022 respectively.

I have carefully considered the application dated 8/6/2021 in its entirety including the affidavit, the grounds of opposition and the submissions by learned Counsel for the parties.

I find that the application has no merit and I dismiss it for the following reasons;

Firstly, **Section 3** of the **Environment and Land Court Act** requires that land cases be heard and determined expeditiously. This is the principal objective of the Act. It is a derogation of this principle to allow too many applications before hearing the parties on merit. Entertaining too many applications defeats this purpose.

Secondly, the Defendant has not been and will not be denied a fair hearing in this case. It will be afforded a chance to state its defence, file its evidence, call its witnesses and cross-examine the Plaintiffs' witnesses. This one is assured.

Thirdly, what the applicant sought and it was rightfully denied by Ochieng Judge, was to decide a land case on a technicality without hearing the parties. Striking out of pleadings is a draconian move that should not be allowed except in the cleanest of cases. I am not satisfied that the Defendant has an arguable appeal.

For the above reasons, I dismiss the application dated 8/6/2021. Costs in the cause.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 21ST DAY OF MARCH, 2022.**

**M.N. GICHERU**

**JUDGE**