



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

MISC. NO. 2 OF 2022

DANIEL MBURUNGA KIRIAMBURI.....APPLICANT

VERSUS

MURUNGI M'ANANGARESPONDENT

RULING

1. The court is asked to grant a stay of execution of the judgment delivered on 24.11.2021 by the lower court based on the affidavit sworn on 25.1.2022 by Daniel Mburunga Kiriamburi and grounds on the face of the application. Order 42 Rule 6 Civil Procedure Rules grants the court the power to issue orders of stay of execution upon satisfaction of the requisites namely demonstration of substantial loss and damage, filing of the application without undue delay, offer for security for the due satisfaction of the decree should the appeal be unsuccessful and whether it is in the interest of justice to grant the orders sought.

2. Expounding on the above principles the court in *RWW vs EKW (2019) eKLR* held the purpose of stay pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory. Further the court held in doing so, it has to weigh this right against the rights of a successful litigant who should not be deprived of the fruits of his judgment.

3. In other words, the court is called upon to ensure no party suffers prejudice that cannot be compensated by an award of costs.

4. As regard substantial loss the court in *Jeny Luesby vs Standard Group Ltd (2014) eKLR* held the commencement of an execution was a lawful process and could not be equated to substantial loss. Further in *Butt vs Rent Restriction Tribunal (1982) KLR 417* the court held power to grant a stay of execution was discretionary while in *National Industrial Credit Bank Ltd vs Aquinas Francis Wasike & another (2006) eKLR* the court held the legal duty was on the applicant to prove the allegations that an appeal would be rendered nugatory, if the application was not allowed.

5. In this case the judgment was entered against the applicant on 24.12.2021 whereas this application was filed on 27.1.2022. The reasons given for the delay is that the typed judgment was not ready until 12.1.2022.

6. I am satisfied there was no inordinate delay and if any the same is sufficiently explained.

7. Turning to the issue of substantial loss the appellant states he bought the suitland in 2013 and has been in occupation. However the trial court held he had not adduced enough evidence to prove the same since the agreement was wrongly written.

8. The appellant now says he is exposed to the danger of an eviction from the suit land hence there was need to preserve the same until the appeal which he says has arguable points is heard and determined.

9. In *Machira v/a Machira Co Advocates vs East African Standard (2002) KLR 63*, the court held an applicant must prove specific details and particulars of substantial loss otherwise without demonstrable pecuniary or tangible loss to the satisfaction of the court it shall not grant stay.

10. It is not enough to state one is in occupation and that there was a pending appeal. In this matter the trial court held there was no prove of purchase of the suit land. The advocate alleged to have witnessed the sale agreement testified that it was a forgery. The applicant had a legal duty to demonstrate over and above occupation on account of an alleged sale, what other loss he was likely to suffer if the application was not allowed.

11. The applicant has failed to demonstrate such loss and has also failed to offer any security for the due performance of the decree. He has not said if the execution process has commenced at all. He has not attached any decree to show the same has been extracted and served upon him for compliance.

12. All these specific details are missing and the court finds it is not in the interest of justice under the circumstances to grant the orders sought.

13. The application is therefore dismissed with costs.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT

THIS 27TH DAY OF APRIL, 2022

In presence of:

Wambua for applicant

HON. C.K. NZILI

ELC JUDGE