



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

MILIMANI LAW COURTS

HCCC NO 1136 OF 2014(O.S)

IN THE MATTER OF ORDER 37 OF THE CIVIL PROCEDURE ACT CAP 21 LAWS OF KENYA

IN THE MATTER OF ARTICLE 40 AND 50 OF THE CONSTITUTION

IN THE MATTER OF SECTION 76 AND 78 OF THE LAND REGISTRATION ACT NO.3 OF 2012

IN THE MATTER OF SECTION 76 OF THE REGISTRATION OF TITLES ACT CAP 281 (REPEALED)

PATEL LALJI RAVJI

DEVRAJ RAVJI LALJI.....APPLICANTS

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

REGISTRAR OF TITLES.....2ND RESPONDENT

THE ATTORNEY GENERAL.....3RD RESPONDENT

RULING

The application for consideration is the Notice of Motion dated **28th November 2014**, brought under Sections 6, 1A, 1B, 3A of the Civil Procedure Act, seeking for orders that there be a stay of proceedings in National Land Commission **Review Case No 18 of 2014 Kabarnet Trading Company Limited –vs- Tom O. Owiny & Amsa J. Keitany** pending the hearing and determination of this case. The applicants are also seeking any orders from this court.

This application is premised on the grounds stated on the face of the application and the supporting affidavit of **Patel Lalji Ravji**, who stated that they had filed an Originating Summons on **21st August 2014**, seeking the lifting of a caution registered by the 2nd Respondent under the 1st Respondent instructions. He further states that now the 1st Respondent is purporting to conduct review meetings in National Land Commission **Review Case No 18 of 2014 Kabarnet Trading Company Limited –vs- Tom O. Owiny & Amsa J. Keitany**, without the involvement of the applicants. That the purpose of the said review is to investigate the title owned by the applicants as it was held before the applicants bought

the property. He added that the hearing of this review was coming up **on 4th December 2014**, and they have heard to file submissions just in case. His contention is that the present suit is ongoing and the outcome will adversely affect the interest of the applicant and that there is a real likelihood that if the Review is not stayed the applicants herein will suffer irreparable and substantial prejudice. He believes that the purpose of **Section 6 of the Civil Procedure Act**, is to prevent multiplicity of suits against a party which may in the long run cause him embarrassment.

There is no replying affidavit from the Respondents to this application though there is a return of service.

I have read and considered the application and the affidavit by the applicants. **Section 6 of the Civil Procedure Act** provides that;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed”.

The applicants’ reliance on this section is because they allege there is another pending suit at the National Land Commission which had a hearing slated for 4th December 2014. This suit was filed in Court on 21st August 2014. However the court has not been furnished with further details of the suit at the Land Commission and it is therefore difficult to tell when the complaint was lodged with the Commission. That notwithstanding the applicants now want this court to issue stay orders against the proceedings of the Land Commission as this suit is pending in court. Ringera J. (as he then was) in **Global Tours & Travels Limited; Nairobi HC Winding up Cause No. 43 of 2000** held that,

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of Justice the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”

The court’s discretion in determining whether or not to grant stay of proceedings as sought in this application must be guided by any of the following three main principles;

- a. ***Whether the applicant has established that he/she has a prima facie arguable case.***
- b. ***Whether the application was filed expeditiously and***
- c. ***Whether the applicant has established sufficient cause to the satisfaction of the court that it is in the interest of justice to grant the orders sought.***

Looking at the instant application from the above perspective, I wish to state that this suit is premised on an ownership dispute wherein the applicants are making a claim of innocent purchasers for value having purchased the suit property from parties who are not included in this suit.

I have looked at the annexure annexed to the applicants supporting affidavit and note that the vendors who purported to have sold the suit property to the Applicants are the Respondents in the Review case. The complaint being on how this suit was acquired by the Respondents and there is an allegation of fraud on the part of the Respondents on how they acquired and later transferred the suit property to themselves. The applicants herein are the Interested Parties having purchased the suit property from the Respondents (in the Review case). The documents furnished by the applicants include a sale agreement between the

Respondents and the applicants, a transfer to the applicants and title to the suit property.

In considering the circumstances of this case, I note that the applicants issue is to have the caveat that had been registered by the Registrar of titles removed. However, the issues raised by the complainant at the Land Commission are pertinent and affects the root of the title and the decision of the Land Commission could potentially affect the ownership of the suit property. I therefore do not find any prima facie case to warrant the issuance of the orders sought. Further the interest of justice demands that the right to a fair hearing should be granted to all parties before a determination is made in any case whether or not it is filed in court or a tribunal. I note that unlike the suit filed in court, the **Review case No 18 of 2014** filed at the Land Commission, all the parties are present. **HALSBURY’S LAWS OF ENGLAND, FOURTH EDITION, VOLUME 37** states that;

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court’s general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”

Having now considered the pleadings generally and relevant authorities, the Court finds that there is no sufficient evidence to persuade it to grant the Orders sought. The Upshot of the foregoing is that the Notice of Motion dated **28th November 2014**, is not merited and the same is dismissed with costs in the cause.

It is so ordered.

Dated, signed and delivered this 16th day of December 2014

L.N. GACHERU

JUDGE

In the Presence of:-

.....for the Plaintiff/Applicant

.....for the Defendant/Respondent

.....Court Clerk

L.N. GACHERU

JUDGE