



REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
CIVIL APPEAL 176 OF 2011
CECILIA NYAMBURA MURUNGA.....APPELLANT/APPLICANT

VERSUS

STEPHEN KUHORA.....RESPONDENT

RULING

The applicant's suit was dismissed and judgment on the counter claim brought by the respondent against her allowed with the result that she was ordered by the court below to transfer parcel of land **No.LAIKIPIA/NGOBIT/SUPUKO BLOCK.2/3547/(WIYUMIRIRIE)** to the respondent. That decision aggrieved her and she has brought this appeal to challenge it. In the meantime she would like this court to stay execution of those orders on the ground that she would suffer substantial loss if the property were to be transferred to the respondent and in the event the appeal were to succeed, as the respondent was likely to transfer it to a third party. The applicant has undertaken to provide security.

The application is opposed by the respondent who has deposed that the application is intended to cause him hardship and agony; that the applicant is actuated by malice as she has several such properties; that she has not paid costs awarded by the lower court; that an order for payment of costs cannot be stayed.

An order of stay of execution will be granted by the High Court where it is satisfied that substantial loss may result to the applicant if the order is not made and the application for stay has been brought without unreasonable delay. The applicant must also demonstrate willingness and readiness to abide by any order as to security.

The applicant has challenged the lower court's judgement in this appeal and the subject matter is land. She is apprehensive that if she complies with the order and the property is transferred to the respondent, the latter may in turn transfer it to a third party and put it beyond her reach, should the appeal eventually succeed. It is such fears, if genuine, that must be weighed against the respondent's right to enjoy the fruits of the judgment given in his favour.

It is noted that the respondent is in the process of developing the property. It will be in the interest of

justice and also in the parties' own interest to stay execution as, in the case of the respondent, he stands to lose funds if he continues with the development only to be told on appeal that after all he was not entitled to the property. For the applicant should the respondent dispose of the property to an innocent third party she stands to lose it if the appeal was allowed.

This application was brought under one month after the delivery of the judgment. There was therefore no delay.

The applicant has given an undertaking to provide security.

It is ordered that there will be an order of stay of execution pending determination of this appeal on condition that the applicant deposits into a joint interest bearing account in the name of her counsel and counsel for the respondent within thirty (30) days from the date hereof Kshs.30,000/=failing which this order of stay stands vacated without further orders.

Dated and delivered at Nakuru this 24TH day of MAY 2012

W. OUKO
J U D G E