



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Appeal 36 of 2010**

**JULIUS KAMANDE.....APPELLANT**  
**VERSUS**  
**KAMUTHI FARMERS COOPERATIVE LTD.....RESPONDENT**

1. By a notice of motion dated

16<sup>th</sup> February, 2010, Julius Kamande Wanyoike, (hereinafter referred to as the appellant), has come to this court, seeking the following orders:

- (i) That this honourable court be and is hereby pleased to stay the subordinate court's decree dated 18<sup>th</sup> day of January, 2010, pending the hearing and the determination of the appeal filed herein.
  
- (ii) That the Registrar of lands to maintain the inhibition in the encumbrance section of the Register relating to L.R. No. Nairobi Block 151/9 entered vide an order in CMCC No.3962 of 2005 till the appeal is heard and determined.
  
- (iii) Costs of this suit be provided for.

2. The application is grounded on the affidavit of Julius Kamande Wanyoike. It is also anchored on the following grounds:

- (i) The appellant has lodged an appeal herein.
- (ii) The parcel of land aforesaid being the subject matter of the appeal should be preserved.
- (iii) The appellant's appeal has high chances of success.
- (iv) The appellant will suffer irreparable loss and damages if the appeal premises changed hands.

3. The application is opposed through a replying affidavit sworn by Eliud Njoroge who is the secretary of the respondent. He maintains that the appellant's appeal and application are an abuse of the court process and that the appellant is guilty of material non-disclosure as he has failed to disclose that his claim has been settled a cheque having been forwarded to his advocate.

4. I have given due consideration to this application. The appellant's claim in the lower court as was evident from the plaint

annexed to the affidavit of Eliud Njoroge was *inter alia* as follows:

- (a) Permanent injunction directing the registrar of titles at Lands Office Nairobi not to transfer the parcel of land more specifically known as Nairobi/Block 151/9 to any other person save the plaintiff Mr. Julius Kamande Wanyoike.
  
- (b) An order directing the defendant herein to transfer the parcel of land L.R.No.Nairobi/Block 151/9 to the plaintiff M/S Julius Kamande Wanyoike forthwith or in the alternative refund to him the total purchase price received, together with 20% interest thereof within fifteen (15) days of the judgment.

5. In its judgment, the trial court gave judgment in favour of the appellant for the alternative prayer for judgment in the sum of Kshs.400,000/= together with interest at court rates. That is the judgment that the appellant is now aggrieved of. The appellant now seeks orders to stay the execution of the orders of the lower court pending the hearing of his appeal. Nonetheless, it is apparent that the appellant having pleaded alternatively for the purchase price, it cannot be argued it shall suffer substantial loss unless the order of stay of execution is granted.
6. Moreover, counsel for the appellant has conceded that the sum of Kshs.400,000/= has already been received by him on behalf of the appellant. In the circumstances, it will not be fair nor just to grant the order sought by the appellant for stay of the decree of the lower court as the decree has apparently already been satisfied. For that reason, I find no merit in this application and do therefore dismiss it with costs.

**Dated and delivered this 25<sup>th</sup> day of March, 2010**

**H. M. OKWENGU**

**JUDGE**

In the presence of: -

Mariara for the appellant

Ochuo for the respondent

Eric - Court clerk