

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT ELDORET

Civil Appeal 21 of 2005

JOHANA CHEPKURUI KIBIWOT

ALIAS JOHANA A. CHEPKURUI:.....APPELLANT

VERSUS

MICAH CHEBOI KIBIWOT:.....RESPONDENT

RULING

The Appellant has filed a Notice of Motion under Order XLI Rule 4(1) of the Civil Procedure Rules and Sections 3 and 3A of the Civil Procedure Act cap 21 of the Laws of Kenya praying for stay of execution of the judgment given on 17/11/2006 and decrees issued on 17/11/2006 and 1/12/2006 pending the hearing and determination of Civil appeal No.21 of 2005. He also prays for the consolidation of that Appeal with Appeal No.27 of 2007. He bases his application on the grounds that stay of execution was denied by the lower court for being sought prematurely. That if execution ensues the appeal will be rendered nugatory. The application is supported by the affidavit of the applicant.

The application was opposed on the grounds that no substantial loss was shown to be occasioned to the applicant if stay was not granted and secondly that the correct procedure in pursuing the right relief was not followed as the applicant had not appealed to the Provincial Appeals Board after losing at the land Disputes Tribunal.

The application seeks stay of execution of the elder's Award which was adopted as a court's judgment in RM.CC.NO.1344/2004 and for the consolidation of the two Appeals filed herein. The subject matter of the Appeals is the parcel of land known as Sambirir/Sambirir/69 and the parties in both Appeals are the same. That empowers this court to consolidate the two Appeals for purposes of hearing. Appeal nos.21/2005 and 27/2007 are consequently ordered consolidated. And so that the appeals may be heard on their merit and further that they be not rendered nugatory the temporary stay granted herein on 20th April 2007 is hereby extended and shall subsist until the appeals filed herein are heard and determined. Costs shall abide in the appeals. Orders accordingly.

DATED AND DELIVERED AT ELDORET THIS 2ND DAY OF DECEMBER, 2009.

P.M.MWILU

JUDGE

IN THE PRESENCE OF

Mr. Kiboi holding brief for Chemitei for the Respondent

N/A for the Applicant

Court Clerk - Paul Ekitela.