

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAIROBI (NAIROBI LAW COURTS)
Civil Suit 591 of 2001

ARTHER KIRIMI RIBERIA.....PLAINTIFF

Versus

FRANKLINE KAMATHI KAMAU.....1ST DEFENDANT

NAIROBI CITY COUNCIL.....2ND DEFENDANT

RULING

In the application dated 30th July 2008, the 1st Defendant/Applicant seeks orders that the court do issue a temporary stay of execution of the judgment dated 28th July 2008 pending the hearing and determination of the intended appeal and that costs of the application be provided for. The application is brought pursuant to Order 41 Rule 4 (1) and (4) of the Civil Procedure Rules and S.3A and S.63 (c) of Civil Procedure Act. It is premised on the supporting affidavit of Frankline Kamathi Kamau and grounds found on the face of the application.

The dispute herein relates to claim over land where by the Plaintiff claims the Applicants land based on a letter of allotment. Parties were heard and judgment was rendered on 28th July 2008. The Applicant is dissatisfied with the court's decision and has commenced an appeal and filed notice of appeal and applied for certified copies of proceedings. The Applicant claims to have been in occupation of the land since 1992, has paid all due to City Council of Nairobi and put up a four story building comprising 4 two bedroom flats on each floor which costs him Kshs.8 million with material on site worth Kshs.3 million and that he will suffer substantially if the building is demolished and hence need for stay.

The Plaintiff/Respondent opposed the motion and in his replying affidavit deposed that the application lacks merit and is an abuse of the court process. That he has been unable to access his property and has suffered great loss. That the Applicant called for the loss as he knew the land to belong to another even as he did the developments. That the Applicant has been continually in breach of the court's orders by continuing to construct on the said plot despite the court's orders and in the event the court grants the orders sought, then he should be called upon to deposit substantial security with the court.

I have considered the affidavits filed both in support and opposition of the Application. In such an application the court needs to satisfy itself that substantial loss may be resulting if the order of stay is not granted and the application should be made without delay.

In the instant case this application was made under Vacation Rules and the court certified it urgent. The court rendered its judgment on 28th July 2008 2 days before vacation commenced, and this application was made 2 days later on 30th July 2008. The Applicant moved with speed and that is evident of his keenness to be heard on this application.

The dispute at hand relates to land whose ownership is claimed by both the Plaintiff and 1st Defendant and the court has found in favour of the Plaintiff. The Plaintiff has not denied that the 1st Defendant has made developments on the plot. Vide an attached photograph which is not contraverted. It seems that the

Applicant would suffer substantially in the event that he won the appeal yet stay was not granted.

The court also takes into account the fact that this matter has been pending since 2002 and it is in the interest of all parties that the same be put to rest for justice delayed is justice denied. I will therefore grant stay but so that the 1st Defendant takes keen interest in prosecuting the intended appeal, I will grant an order of stay on condition that the 1st Defendant deposits Kshs.500,000/= in an interest earning account of both Counsel of the parties within 7 days hereof. In default the order of stay will automatically lapse.

Costs will abide the appeal.

Dated and delivered this 5th day of September 2008.

R.P.V. WENDOH

JUDGE

Read in the presence of:-

Mr. Odawa for Respondent/Defendant

Holding brief for Mr. Muchoki

Mr. Mambiri holding brief for Nyaga for Plaintiff/Respondent

Daniel: Court Clerk