

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT EMBU

Civil Appeal 50 of 2005

JOHN NJUE NYAGA.....APPELLANT

VERSUS

NICHOLAS NJIRU NYAGA.....1ST RESPONDENT

HARRISON IRERI NYAGA2ND RESPONDENT

RULING

The Appellant has filed an application seeking stay pending the hearing and determination of Appeal No. 50/2005 and Eastern Provincial Lands Appeal No. 30 of 2005.

The grounds upon which application is made are written on the application showing that no provisions of stay is contained in the rules of Land Disputes Tribunals Act and that the award was adopted as decree in the Magistrate Court. And that the Applicant will be prejudiced and suffer irreparable loss and damage if the decree is executed before the appeal is heard. And further that appeal will be rendered nugatory

The application is supported by affidavit of the appellant. This is the second application the first having been dismissed by the Trial Magistrate. I have perused the application. There is indeed some appeal filed by the applicant as admitted by the Respondent. It may not have merit as they allege that that will be determined by the appellate court. The acts by the Respondent of “*having taken all necessary steps towards affecting the court decree*” is not acceptable. If a party has a right of appeal he must be given opportunity to pursue the same.

Under this application the court is only required to consider a stay pending of such appeal. The requirement is for applicant to show that he has sufficient reason to warrant the grant of stay. He must show substantial loss and give security for performance of any order that may be binding upon him. The application is not filed with delay if the land is subdivided and registered in names of other persons the Applicant should suffer substantial loss.

I am satisfied that stay of execution should be granted and I grant the same on condition that the appellant shall deposit into court shs.50,000/- within the next 21 days to be security as demanded by the provisions of the law. Application allowed subject to payment aforesaid.

Costs in the cause.

Dated 12th March 2006.

J. N. KHAMINWA

JUDGE