



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 1 OF 2019

P.C.E.A THRO' THE REGISTERED TRUSTEES.....APPLICANT

VERSUS

THE COUNTY COUNCIL OF MERU.....1ST RESPONDENT

THE CHAIRMAN, BOARD OF GOVERNORS

MAARA SECONDARY SCHOOL.....2ND RESPONDENT

THE DIOCESE OF MERU, REGISTERED TRUSTEE

KANYAKINE PARISH.....3RD RESPONDENT

RULING

1. **PCEA thro' the Registered Trustees** (*the applicant herein*) filed the notice of motion dated 24th July 2020 seeking a stay of execution of the court's judgement delivered on 14/7/2020 pending the hearing and determination of its intended appeal. The application is supported by the grounds set out on its face and the supporting affidavit of **Rev. Patrick Murithi** who averred that the applicant is dissatisfied with this court's judgement and it has since filed a notice of appeal. That the applicant has an arguable appeal and is apprehensive that the respondent may execute the judgement of this court by evicting the applicant from the suit land and deal with the suit land in a manner likely to render the applicant's appeal nugatory.

2. The application was opposed by the 2nd respondent through a Replying affidavit dated 5th October 2020 sworn by **Fr. Stephen Muriungi** a priest serving with the 3rd Respondent. He averred that the land which the applicant is alleging that it will be evicted from is comprised of a public Primary School which serves the entire community and their diocese hence they have no intention of evicting the school from the land. That the School was built by the Community and at no time did the applicants own the land they are claiming hence the issue of the applicant suffering substantial loss does not arise.

3. That the applicant shall not suffer any prejudice or substantial loss if the orders of stay are not granted since they have not filed any appeal.

4. Rev. Patrick Murithi filed a further affidavit dated 14th October 2020 stating that they have filed an appeal in **Nyeri Court of Appeal No. 145 of 2020**. That the allegations that they have not been in occupation of the suit premises is false as they have stayed on the land for twenty years and have developed the same.

5. This court has carefully considered the issues raised by the parties. The principles for granting an order for stay of execution are provided for under Order 42 rule 6 (2) of the Civil Procedure Rules, where it is stipulated as follows:

“No order for stay of execution shall be made under sub-rule (1) unless:-

a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The power of the court to grant or refuse an application for a stay of execution is a discretionary power, - See ***Amal Hauliers Limited v Abdunasir Abukar Hassan [2017] eKLR***.

7. The application herein was made ten days after the delivery of the Court's Judgement, hence the same was made without delay.

8. On *substantial loss* the applicant herein contends that it has been in occupation of the suit premises for more than twenty years. The Respondents on their part states that the same has been occupied by a school built by the community and which they have no intention of evicting.

9. In the case of **Samvir Trustee Limited V Guardian Bank Limited [2007] eKLR** it was held as follows;

“It is my humble view that for the applicant to obtain a stay of execution, it must satisfy this court that substantial loss would result if no stay is granted. It is not enough to merely put forward allegations or assertion of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider mere assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and appropriate evidence of substantial loss....”

10. In **Wangalwa & another vs Agnes Naliaka Cheseto Misc. application no. 42 of 2011 (2012) eKLR** the court stated thus on the issue of substantial loss:

“The appellant must establish other state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal”.

11. The contentious issue in this case related to double allocation of the suit premises. Both parties claim to be in occupation of the suit land where there are developments including Maara Secondary School. This court has so far held that the respondents proved their case as regards to their entitlement of the suit property. The respondents have averred that they have no intention of evicting the school from the suit premises which apparently is a public school. I find that the applicant has not demonstrated to the satisfaction of this court the element of substantial loss that it stands to suffer if the order for stay is not granted.

12. The applicant has intimated that it is ready and willing to provide security for the performance of the decree. I however find that substantial loss having not been proved, then there is no need to delve further on the issue of security.

13. In the end, I do find that the application dated 24.7.2020 is not merited and the same is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED AT MERU THIS 27TH DAY OF JANUARY, 2021

HON. LUCY. N. MBUGUA

ELC JUDGE

ORDER

The date of delivery of this Ruling was given to the advocates for the parties through a virtual session via Microsoft teams on 15.10.2020. In light of the declaration of measures restricting court operations due to the *COVID-19 pandemic* and following the practice directions issued by his Lordship, the Chief Justice dated 17th March, 2020 and published in the Kenya Gazette of 17th April 2020 as Gazette Notice no.3137, this Ruling has been delivered to the parties by electronic mail. They are deemed to have waived compliance with order 21 rule 1 of the ***Civil Procedure Rules*** which requires that all judgments and rulings be pronounced in open court.

HON. LUCY N. MBUGUA

ELC JUDGE