



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MALINDI

ELC CASE NO. 25 OF 2018

JOEL KAZUNGU YAA MANGI.....PLAINTIFF

VERSUS

1. DIRECTOR OF LAND ADJUDICATION & SETTLEMENT

2. LAND REGISTRAR KILIFI

3. DAVID RODNEY GREEN

4. DEBORAH RODNEY GREEN.....DEFENDANTS

RULING

1. By the Notice of Motion application dated 5th June 2020, Daniel Rodney Green and Deborah Rodney Green (the 3rd and 4th Defendants/Applicants) pray for a stay of execution of the Judgment rendered herein on 6th May 2020 pending the hearing and determination of an intended Appeal.

2. The application which is supported by an Affidavit sworn jointly by the two applicants is premised on the grounds: -

- i) That this Court rendered its Judgment on 6th May 2020 whereby it allowed the Respondent's claim against the Applicants;*
- ii) That aggrieved with the said decision, the Applicants intend to file an Appeal to contest the decision and they have timeously filed a Notice of Appeal and requested for certified copies of proceedings;*
- iii) That the effect of the Court's Judgment has substantial and serious implications of deregistering the Applicants as proprietors and losing the subject parcel of land which is currently in their possession after they purchased the same in 1999;*
- iv) That the Applicants have invested a lot of time, hardwork and finances into the suit property in order for the same to flourish as a farm over 21 years;*
- v) That despite the Intended Appeal, the Respondent is at liberty to execute the decree with no orders to stay the execution;*
- vi) That the Respondent has already written to the Applicant's Advocates of his intention to execute the decree;*
- vii) That should the Respondent be allowed to execute the Judgment and decree, the Applicants stand to suffer substantial loss by losing their land measuring 14 Acres wherein the whole substratum of the said intended Appeal will be destroyed and/or rendered nugatory; and*
- viii) That the Applicants have an arguable Appeal as they are raising substantial issues that need revisiting by the Court of Appeal.*

3. When the application came up for hearing, the Advocates for the Plaintiff/Respondent informed the Court that they had filed Grounds of Opposition to the same. On that account, the Court directed the parties to file and exchange submissions on the application. As it turned out, no such Grounds of Opposition and/or submissions were filed and the application basically proceeded unopposed.

4. I have perused and considered the application. I have equally perused and considered the submissions filed herein by the Learned Advocates for the 3rd and 4th Defendants/Applicants.

5. The conditions to be met before an order of stay of execution is granted are provided by Rule 6(2) of Order 42 of the Civil Procedure Rules 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. In the instant matter before me, the Applicants are the registered proprietors of the subject land said to be measuring approximately 14 acres. They were so registered in 1999 and claim to be carrying on farming activities thereon. It is their case that they have over that period of time invested a lot of time and resources into the suit property.

7. In my Judgment delivered herein on 6th May 2020, I allowed the Plaintiff/Respondent’s prayers including an order directed to the Land Registrar to issue title documents in the name of the Plaintiff. The Applicants are dissatisfied with the said Judgment and lodged a Notice of Appeal thereto some two weeks after the delivery thereof.

8. As it were, the purpose of an application for stay pending Appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory.

9. Accordingly, and taking the totality of the circumstances into consideration, I think it is only fair that any further execution of the decree be stayed. From a perusal of the record herein, it was evident from a letter dated 1st July 2020 and filed herein on 2nd July 2020 from the Chief Land Registration officer, Kilifi County addressed to the Deputy Registrar of this Court that the execution process had reached an advanced stage.

10. In the circumstances, I hereby direct that the status quo obtaining as at the date of this Ruling be maintained pending the hearing and determination of the Appeal.

Dated, signed and delivered at Malindi this 19th day of February, 2021.

J.O. OLOLA

JUDGE