

REPUBLIC OF KENYA
IN THE HIGH COURT OF KENYA
AT NAKURU
MISC. CIVIL APPL. NO. 247 OF 2002

REPUBLICAPPLICANT

VERSUS

RIFT VALLEY PROVINCIAL LANDS APPEAL TRIBUNAL.....RESPONDENT

RULING

This is an application under Order L Rule 1 and Order XL1 Rule 4 of the Civil Procedure Rules (hereinafter referred to as “the Rules”, sections 3A and 63(e) of the Civil Procedure Act (Cap 21) and all enabling provisions of the law. In it the Ex Parte Applicant seeks, in pertinent part, the following order:

“2. That pending the hearing and determination of the intended appeal, this court be pleased to stay the adoption and execution (of the decision) of Rift Valley Provincial Appeals Land Tribunal dated 2 nd July, 2002 in Appeal No. 18 of 2001”

The Ex Parte Applicant brought an application for Judicial Review seeking to quash the decision of the Rift Valley Provincial Tribunal Case No. 18 of 2001 dated July 2, 2003 and to prohibit the Respondent and the Interested Party from acting on the said decision which application was refused by this Court. He was aggrieved by the decision of this court and has filed an appeal against the same and now brings this application to have the execution of the said decision stayed pending the hearing and determination of his appeal. In his affidavit in support of the application, the Ex Parte Applicant stated, without precision, that if the decision of the Tribunal was implemented, he would lose his entire land.

The jurisdiction of this court in deciding applications for stay of execution pending appeal is governed by Order XLI Rule 4(2) of the Rules which provides as follows:

“No order for stay of execution shall be made ... 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.”

Mr. Kiplenge for the Applicant argued that this was not a liquidated claim for which security could be provided and that the Interested Party had not asked for such security. I cannot agree with him. The Rules do not make a distinction between a liquidated and unliquidated claim on the question of security. It is also not the responsibility of the Respondent (in this case the Interested Party) to request for security. It is the responsibility of the Applicant, as the Rule says to give the security. As the Applicant before me has failed this test, I am unable to exercise my discretion in his favour. On that conclusion alone, his application must fail.

I, therefore, dismiss the Ex Parte Applicant’s application dated May 6, 2003 with costs to the Interested Party. The temporary stay granted in favour of the Ex Parte Applicant is hereby set aside.

Dated and Delivered at Nakuru this 23rd day of July, 2003.

ALNASHIR VISRAM

JUDGE