



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. E111 OF 2021

CHARLES MBAABUAPPELLANT

VERSUS

DANIEL M'MWIREBUA ANAMPIURESPONDENT

RULING

1. Through an application dated 15.10.2021, the applicant seeks a stay of execution of the lower court judgment pending hearing and determination of this appeal. The application is supported by the applicant's affidavit sworn on 14.10.2021.
2. The grounds are that the application has been brought without undue delay; the applicant has permanent developments on the land in issue which are likely to be demolished and if demolished the appeal shall be rendered nugatory.
3. The respondent opposes the application through a replying affidavit sworn on 9.11.2021.
4. The first ground is that the applicant allegedly used his influence to cause double allocation of the suit land and hence took away the respondent's parcel of land.
5. Secondly, the respondent states the trial court had issued an order of status quo on 24.10.2019 but the applicant ignored it and continued with developments on the land hence he cannot blame anybody but himself for the consequences of ignoring a valid court order.
6. Thirdly, the respondent states the applicant has not offered any security for the due performance of the decree should his appeal not succeed.
7. Fourthly, the respondent states he is the one to suffer irreparable loss and damage due to trespass and illegal developments on his land yet he is entitled to enjoy the fruits of his judgment.
8. A party seeking for a stay of execution has to show he has come to court without unreasonable delay, he stands to suffer substantial loss and must offer security for due satisfaction of the decree.
9. In this case, the applicant moved to court on 18.10.2021 seeking for the stay while the judgment was delivered on 28.9.2021. My finding is there was no inordinate delay in filing this application.
10. On the second principle of stay, the applicant states he has permanent developments on the subject land. The nature of the developments is not explained and particulars thereof are stated especially on when they same were made.
11. The applicant does not state if he lives on the suit land. Similarly, he does not state the value of the alleged developments. Further he does not demonstrate the nature of irreparable damage or loss he is likely to suffer if the alleged developments are demolished.
12. Again, the applicant does not demonstrate how the substratum of the appeal is likely to change if the stay is not granted.
13. The respondent has averred the applicant ignored the orders of the maintenance of status quo pending the hearing and determination of the suit hence he cannot blame anybody for the eventualities. It is not enough for an applicant to state he will suffer substantial loss unless the stay is granted.
14. Courts have insisted that a party seeking stay must demonstrate substantial loss through cogent evidence. The applicant has not

demonstrated any special circumstances which can sway the discretion of the court to tilt the scales of justice in his favour as held in *Samvir Trustee Limited –vs- Guardian Bank Limited [2007] eKLR.*

15. Mere assertions of substantial loss are not enough as held in *Charles Wahome Gethi –vs- Angela Wairimu Gethi [2018] eKLR, James Wangalwa & Another –vs- Agnes Naliaka Chesoto, [2012] eKLR and Njuguna Njoroge –vs- Peter Kiilu Mucheru & 2 Others [2017] eKLR.*

16. Coming to the issue of security, the applicant has offered no security at all. In *Mwaura Karuga T/A Limit Enterprises –vs- Kenya Bus Services Ltd & 4 Others [2015] eKLR,* the court held that security must be one which shall achieve the due performance of the decree which might ultimately be binding on the applicant.

17. The applicant has not demonstrated good faith that the application is not aimed at merely denying the respondent’s enjoyment of fruits of his judgment. He has not proposed any security or readiness to offer any. See *HE –vs- SM [2020] eKLR.*

18. Even looking at the wider concept of substantial justice under **Sections 1A, 1B and 3A of the Civil Procedure Act** as read together with **Article 159** of the Constitution, my finding is it would be against the interest of justice to grant any stay orders.

19. The application is dismissed with costs.

20. Meantime, the Deputy Registrar to request for the lower court file.

21. Mention before the Deputy Registrar on 17.3.2022.

Orders accordingly.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 2ND DAY OF FEBRUARY, 2022

In presence of:

Gichunge for appellant

Orimbo for respondent

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE