



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

ELC NO. 145 OF 2017

STEPHEN KIMITEI ARAP SANG.....PLAINTIFF

-VERSUS-

DOMINIC KIPROTICH.....1ST DEFENDANT

JONAS METTO.....2ND DEFENDANT

GLADYS CHELAGAT.....3RD DEFENDANT

EDWIN CHEBET.....4TH DEFENDANT

EMMANUEL KOLIL.....5TH DEFENDANT

HEZEKIAH KIPTOO.....6TH DEFENDANT

DANIEL OKONG'O.....7TH DEFENDANT

DAVID LETTING.....8TH DEFENDANT

RODAH TOO.....9TH DEFENDANT

RULING:

1. This is a ruling in respect of a Notice of motion dated 4th February, 2022 in which the 8th and 9th Defendants/Applicants seek stay of execution pending appeal. The suit herein was compromised in 2017 whereby the Plaintiff/Respondent agreed to be paid Kshs. 3,000,000/= within an agreed period.
2. The Applicants who are settled on the suit property failed to pay the entire balance within the agreed period. The Respondent nevertheless continued to receive payment towards the purchase price. The Applicants have paid a total of Kshs 2,290,000/= and the balance is said to be Kshs 500,000/= On 20th January, 2022 the Court dismissed the Applicants' application which sought extension of time within which to clear the balance.
3. The Court ordered that the Applicant's be evicted from the suit property within 45 days from 20th January, 2022. The Applicants have appealed against the ruling which allowed the eviction and demolition of structures on the suit property under supervision of the Police. The Applicants contend that if stay of execution is not granted the Respondent will proceed to evict them which will render the appeal nugatory.
4. The Respondent opposed the Applicants' application based on a replying affidavit sworn on 14th February, 2022. The Respondent contends that the Applicants' application is vexatious and that it lacks merit. The Respondent argues that the applicants were given opportunity to pay the balance of the purchase price within 45 days from 3rd March, 2021 failing which they be refunded the amount already paid. The Applicants did not comply but they instead moved to Court for another extension of time which the Court declined to grant.
5. The Respondent further argues that the Applicants' advocate wrote to his lawyers seeking immediate refund of the sums paid. The Respondent's advocate thereafter made a refund of the sums already paid less costs and estimated costs for the eviction. The Respondent therefore argues that the Applicants cannot ask for a refund and at the same time seek for stay of eviction.

6. In a further affidavit sworn on 17th February, 2022, the Applicant's contend that the entire purchase price has now been paid. The Applicants contend that the Respondent's advocate cannot unilaterally retain Kshs 250,000/= as costs and Kshs 760,000/= as costs for demolition. The Applicants argue that their advocate does not act for all the Defendant's and there is no way he would have sought for a refund on behalf of Defendants whom he does not represent.

7. I have considered the Applicants' application as well as the opposition to the same by the Respondent. This being an application for stay of execution pending appeal, the court has to be satisfied that the application has been brought without unreasonable delay; that the Applicants have demonstrated that they will suffer substantial loss if stay is not granted and that the Applicants have offered security for the due performance of the decree as may ultimately be binding upon them.

8. Though the Applicants' application was dismissed which is a negative order, the Court went ahead to order that the Applicants be evicted from the suit property and their houses on the suit property be demolished. The ruling of the Court was given on 20th January, 2022. The application for stay was filed on 4th February, 2022. I do find that the application was filed within a reasonable time.

9. The Applicants have preferred an appeal to the Court of Appeal against the ruling of 20th January, 2022. There are already orders of eviction and demolition of structures from the suit property. If eviction and demolition were to be carried out, the Applicants' appeal will be rendered nugatory. The Applicants have therefore demonstrated that they will suffer substantial loss if stay of execution of the Court's orders is not granted.

10. The Applicants have offered to provide security for the due performance of the decree which will ultimately be binding upon them. I find that the Applicants' application is well merited. I allow the same with the result that a stay of execution is hereby granted pending the hearing and determination of the appeal. The stay is given on condition that the applicants deposit a sum of Kshs 300,000/- in a joint interest earning account in the names of the advocates within 45 days failing which the stay will automatically lapse. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 3RD DAY OF MARCH, 2022.

E. OBAGA

JUDGE

In the virtual presence of;

Mr. Momanyi for 8th and 9th Defendant.

Mr. Rotich for Mr. Tororei for Plaintiff.

Court Assistant –albert.

E. OBAGA

JUDGE

3RD MARCH, 2022