



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL E083 OF 2021

ZAKAYO KABERIA.....APPELLANT

VERSUS

VERONICA KANDONGE M'NJOGU.....1ST RESPONDENT

PETER M. NJOGU.....2ND RESPONDENT

BAITUIRI M'NJOGU.....3TH RESPONDENT

THUANIRA M'NJOGU.....4TH RESPONDENT

PAUL M'NJOGU.....5TH RESPONDENT

RULING

1. **Zakayo Kaberia** hereinafter the appellant brought a notice of motion seeking stay of execution of the ruling made on **23rd June 2021** pending hearing and determination of this appeal.

2. The application is supported by an affidavit sworn on **3rd August 2021**. The lower court ruling arose out of an application to review the judgment issued on **28/12/2018** in which the court had referred the matter back to the Land Adjudication Officer Kangeta Unit.

3. By written submissions dated 24th September 2021, the appellant submits he has a title deed for **L.R No. Kangeta/Kangeta/7727** He relies on ***James Thomas Andafu –vs- Joseph Makokha Akhulanya (2018) eKLR*** on the proposition that unless there is stay, the substratum may be affected, as the land may change hands at the meeting summoned by District Land Adjudication and Settlement Officer.

4. Further reliance was made on ***RWW –vs- EKW*** on the issue of security which is discretionary in nature.

5. The appellant also relies on ***Consolidated Marine –vs- Nampijja & Another (NBB)*** unreported on the proposition that stay of execution is aimed at preserving the subject matter so as to allow a party to exercise his right of appeal and to avoid the appeal being rendered nugatory.

6. In a replying affidavit sworn on 20/9/2021 the respondent opposes the grant of stay orders. While acknowledging there is a title deed, the respondent maintains the title was illegally acquired because previous orders of the District Land Adjudication & Settlement Officer at the objection stage were that both parties be registered as joint owners to the property.

7. The respondent avers that the lower court decision was partially implemented as per annexure marked UKM “1” to the affidavit.

8. Further the respondent takes the view that the implementation of the lower court judgment would occasion n prejudice to either party.

9. In ***Butt –vs- Rent Restriction Tribunal (1979) eKLR*** the Court of Appeal held the power to grant or refuse stay is discretionary and ought to be exercised in a way as not to prevent an appeal being heard and determined.

10. In ***Victory Construction –vs- BM (2019) eKLR*** it was held a court in deciding on whether or not to grant stay consideration must also include the overriding objective under **Section 1A, & 1B of Civil Procedure Act**.

11. The judgment was rendered on 28.12.2018 whose effect was to the refer the parties to the land Adjudication Officer to handle for the

objection after which any new issues were to be determined through the internal mechanism set out in the **Land Adjudication Act Cap 284**. Exactly a year and one month after the appellant applied for review of the judgment leading to the ruling delivered on 23/6/2021.

12. The court held the matter was already concluded, could not be re-opened and that if parties had any issue, they must bring a fresh suit since the issue was already beyond the **Land Adjudication Act and Land Consolidation Act** Cap 284 and 283 respectively.

13. The power to cancel a title deed does not belong to the District Land & Settlement Officer under the **Land Registration Act 2012**. The appellants fear alone, for being summoned by the District Lands Adjudication & Settlement Officer, cannot amount to substantial loss as held in ***Samvir Trustees Ltd –vs- Guardian Bank Ltd (2007) eKLR***.

14. In any event, even if parties were to appear before the District Lands Adjudication & Settlement Officer and adverse directions given against the applicant, he still has avenues for redress.

15. Turning to the issue of whether the application was made without unreasonable delay, judgment was rendered on 28.12.2018. No appeal was lodged against it. A lot has happened including issuance of the title deed in favour of the applicant since 2018.

16. The application has been brought after an inordinate delay which has not been explained at all. Similarly the alleged decree or order has not been attached for the court to verify if the summons allegedly issued by District Lands Adjudication & Settlement Officer are related to the execution of the decree. Needless to say the letter summoning the applicant is dated 9/7/2021 for a meeting scheduled for 15/7/2021. The application was made on 7/8/2021 long after the said meeting and the court has not been told what became of it. The application is already overtaken by events.

17. Lastly the property is family land. I see no reason why the appellant should be shying away from meeting his relatives before a neutral person and perhaps reach out an out of court settlement one way or the other.

18. Due to the foregoing I find the application lacking merits. The same is dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 3RD DAY OF NOVEMBER, 2021

In presence of:

Gitonga holding brief for Maranya for appellant – present

Mutembei Kimathi for respondents – absent

Court Assistant - Kananu

HON. C.K. NZILI

ELC

JUDGE