



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 262 OF 2017

ERICK KIPLANGAT CHERUYOIT.....PLAINTIFF

VERSUS

RICHARD MASOI AND 33 OTHERS.....DEFENDANTS

RULING

By a Notice of Motion dated 15th July, 2019 the Defendant applicant sought for review of the decree delivered on 25th June, 2019 in respect of the sum of kshs. 2,500,000 being security for costs of the suit and there be a stay of execution pending the hearing and determination of the application and further that the respondent be accrued reasonable time to avail security. The application is based on the grounds that the court did not take into account the value of the land as pleaded and the remuneration order and that the applicant will likely suffer irreparable loss and damage. The applicant contends that the suit land is valued at kshs. 9,300,00 and that the costs of the suit as per the remuneration order is kshs. 120,000 and thus the court order is way above the remuneration order. The Applicant also averred that the applicants are not in a position to set the amounts ordered and in the event that the order is not renewed they will suffer irreparable loss and damages.

The application was opposed by the plaintiff respondent by way of a replying affidavit and he averred that the orders being sought to be stayed are in the process of being executed and the application is brought in bad faith ad it is meant to deny the plaintiff the right to enjoy the fruits of their judgement and since the application was filed late the applicant have not explained. The respondent further averred that once the court had made a conditional grant for orders of stay it has become functus officio and further that the court can only revisit and/or review an order upon the discovery of new evidence and the applicant has not demonstrated the dismay of such orders and the only recourse that the applicant has is to appeal the decision.

The applicant in his submission contended that the court has the requisite power to review its order when there exists an error on the face of the record.

On the issue of substantial loss likely to be suffered the applicant contends that the security for costs of kshs. 2,500,000 is too high and very costly and thus suffer substantial loss as they are not financially able.

The respondent on his submissions outlined the grounds upon which the court can order for preview as the discovery of new evidence, mistake or error apparent on the face of the record. The respondent contends that the applicants have not satisfied any of the above conditions and thus the application lacks merit.

I have considered the application and the replying affidavit in opposition to the same and the submissions filed by the parties and the issue for determination is whether the applicant has met the necessary conditions for the court to review the orders of 24/6/2019. The conditions for review as rightly pointed out by the parties in the application are that there must have arisen new evidence to warrant the review of an existence error apparent on the face of the record and the existence of such other sufficient reasons.

The Application is grounded on the reasons that there existed an error when the court ordered the applicant to deposit the sum of kshs. 2,500,000 as security for costs contrary to the provisions of the advocates remuneration order where the costs of the suit could be about kshs. 120,000.

The aforesaid order was given when the court disposed for an application for stay of execution pending appeal.

It is the applicant's contention that was erroneous however, from the pleading of the applicant dated 25/6/19 there was no prayer by the applicant to provide security for costs and hence it is erroneous to allege that the court had ordered the applicant to deposit the sum of kshs. 2,500,000 as security for costs. The order was given as condition for the grant of the order of stay.

The court was worried if that particular finding was guided when both the applicant and the respondent have put the value of the land at kshs.

20 million and 9,300,000 respectively and on this wide difference the court had fixed the security to proceed.

Having found that there was no error apparent on the face of the record the applicant did not plead the other conditions and I find that the existence of new evidence was not placed before me. However, since the applicants have pleaded their inability to pay the aforesaid costs I will exercise my discretion in respect of costs and I will gratuitously lower the security to be deposited by the applicant to kshs. 1,500,000 within 60 days from the date of the ruling so that their right to access justice in court is not hindered by my earlier order. Each party to bear its costs.

DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 6TH day of MAY, 2020.

Mohammed Kullow

Judge

6/5/2020

Before me:

CA:Chuma

N/A for the parties and advocates

Mohammed Kullow

Judge

6/5/2020