



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC CAUSE NO. 10 OF 2017**

**FORMERLY NAKURU HCC NO. 246 OF 2000**

**JOHNSON KASAINA & 4 OTHERS.....PLAINTIFFS**

**-VERSUS-**

**PASAYE OLE KEREMA & 8 OTHERS.....DEFENDANTS**

**RULING**

By an Application dated 16<sup>th</sup> November, 2018 and brought under Article 162 of the Constitution of Kenya, Order 42 Rule 6 Order 51 Rule 1 of the Civil Procedure Rules the Applicant sought for the stay of further proceeding pending the lodging and hearing of the 1<sup>st</sup> to 3<sup>rd</sup> and the intended 5<sup>th</sup> Plaintiff's Appeal against a Ruling delivered by the court on 31<sup>st</sup> October, 2018. The Application was based on the grounds that the Applicants have already filed a Notice of Appeal and have applied for proceedings to enable them lodge the Appeal and that unless the orders sought are not granted the 1<sup>st</sup>, 3<sup>rd</sup> and intended 5<sup>th</sup> Plaintiff/Applicant will suffer substantial loss and thus seeks the court to preserve the subject matter.

The Application was also supported by the Affidavit of Johnson Kasaina Ole Sadera in which he deponed to facts in support of the above.

The Application was opposed by the 1<sup>st</sup> to 7<sup>th</sup> Defendants who filed grounds of opposition in which they contend that the grant of stay of proceedings is discretionary and must be exercised for good reasons.

The Respondent further contends that the amendment that was sought was the inclusion of a 5<sup>th</sup> Plaintiff whose stake in the matter has not been ascertained and further that the suit has been in court for a period of over 20 years and that the longer it takes crucial evidence could be lost and that pursuant to Article 159 (2) (b) of the constitution, the courts are enjoined to expeditiously dispose suits.

I have carefully considered the application before me, the opposition and submissions filed by the parties and this being an application for stay of proceedings which the applicants are entitled which actualizes the Applicants right to access to justice as held in the case of **JAMES WANGALWA & ANOTHER -VERSUS- AGNES NALIKA CHESETO** in Misc. Application No. 42 of 2001 where the court observed that:-

**“the right to an Appeal is a Constitutional Right that actualizes the right to access to Justice, protection and benefit of law..... and that anything that renders the Appeal nugatory impinges the right of Appeal.**

Having regard to the impact even though the Respondents contend that they have been in court for over 20 years the Applicant being desirous to exercise his right of appeal must not be obstructed where he shows good cause. I am alive to the fact that if the hearing of the matter proceeds and the Appeal is allowed precious judicial time will be wasted.

Since the Application before me is one that seeks out the exercise of my discretion it is beholden on me to exercise that discretion judiciously so as to inspire confidence in our Judicial system as one that upholds the provisions of the constitution.

From the pleadings and the submissions, I find that that applicant has demonstrated that he shall suffer loss in the event that the suit proceeds and for the above reasons, I will allow the Notice of Motion dated 16<sup>th</sup> November, 2018 and I consequently order that the proceedings herein are stayed pending the hearing and determination of the applicant's application.

Each party should bear its costs.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 9<sup>th</sup> day of July, 2019**

**Mohammed Noor Kullow**

**Judge**

**9/7/19**

In the presence of:-

Mr Munyori for plaintiff/applicant

N/A for the Respondent

CA:Chuma

**Mohammed Noor Kullow**

**Judge**

**9/7/19**