



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC MISC NO. 6 OF 2019

SOLOMON LIMPASO PESI & OTHERS.....APPLICANTS

-VERSUS-

NAISARISARU ENE OLOLDAPASH & ANO....RESPONDENTS

RULING

By an Application dated 1st April, 2019 the Applicant sought for orders pending the hearing and determination of the Applicants' Appeal there be a stay of execution of the court's order issued on 15th December, 2017; a withdrawal of Kilgoris Principal Magistrate's Court Environment and Land Court No. 117 of 2018.

The Application was based on the grounds that the Applicant had lodged a Notice of Appeal on 30th July, 2018 while the Kilgoris Magistrate's Court issued an order that the Applicant should vacate the suit parcel of land within 30 days and unless the orders sought are issued they will suffer loss and lastly their intended Appeal could be rendered nugatory in the event that the matter before Kilgoris Magistrate's Court is not withdrawn. The Application was supported by the Affidavit of Bigogo Onderi Advocate who deponed that they had applied for printed copies of the proceedings, ruling and decree of orders of the court dated 23rd May, 2018 to enable them prepare for the Appeal. However, he alleges that because of the transfer of the suit to Kilgoris for purposes of execution it became difficult for him to get the proceedings and prepare the record of appeal.

The Applicant further averred that the applicant is likely to be evicted from the land if the application herein is not allowed.

The Application was opposed by the Respondent who filed a replying affidavit and stated that the application and the Affidavit in support are misleading and inaccurate.

The Respondent further contends that he applied for an order of execution and eviction after the court rendered its judgement, and later dismissed an application by the applicant herein to set aside the judgement and later executing proceedings made in Kilgoris magistrate's court and thus there is nothing capable of being transferred.

The Respondent further contends that no Appeal has been filed in respect of the matter herein and the instant application is an abuse of the court process.

I have read the application before me and the submissions made by counsels the grounds upon which the order can be granted is now settled.

The Applicants main grounds for seeking the instant application is that he filed a Notice of Appeal and could not get the proceedings and Judgement as the file was transferred to Kilgoris. I have checked the record before me and the affidavit in support of the application and I find no application by the Respondent to be supplied with the proceedings. The applicant states that it was logistically difficult to get the proceedings but I don't see how he could get them if no application was made for them. Further the Applicant by his own admission participated in the proceedings before the court where the original file was transferred for execution and how he could not get the proceedings is to say the least misleading.

On whether the applicant will suffer loss from the application I have not seen any evidence to suggest that the applicant will suffer loss in the event that the orders sought herein are not granted.

Having considered the application before me and the reasons stated hereinabove I find that the Application dated 1st April, 2019 lacks merit and I thus dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at NAROK on this 8th day of July, 2019

Mohammed Noor Kullow

Judge

8/7/19

In the presence of:-

Miss Adala holding brief for Ogutu Mboya for the Respondents

N/A for Applicants

CA:Chuma

Mohammed Noor Kullow

Judge

8/7/19