



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS

ELC. CASE NO. 342 OF 2012

KIOKO MUTHOKA PLAINTIFF

VERSUS

KALEMBWANI NGAAMBA FARMERS COMPANY LIMITED.....DEFENDANT

RULING

1. In the Notice of Motion dated 12th February, 2021, the Plaintiff has sought for the following orders:

a. That there be a stay of execution of the Decree herein and or of the Taxation of Bill of Costs herein and all consequential orders be stayed pending the hearing and determination of this Application.

2. The Application is supported by the Affidavit of the Plaintiff who has deponed that on 31st January, 2020, the court pronounced its Judgment in this matter; that being dissatisfied with the said Judgment, he lodged an Application in the Court of Appeal for leave to Appeal out of time and that the Application is still pending.

3. According to the Plaintiff, if the Defendant's Bill of Costs dated 22nd September, 2020 is taxed and execution carried out, it would result in him suffering irreparable loss and that the intended Appeal will be rendered nugatory.

4. The Defendant did not file a response to the Application. I have considered the Application before me. The only issue to determine is whether an order of stay of execution of the Judgment of 31st January, 2020 should issue.

5. The law governing a stay of execution of a decree or order is provided for by Order 42 Rule 6(2) of the Civil Procedure Rules which provides as follows:

“(2) No order for stay of execution shall be made under sub rule (1) unless—

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The record shows that on 31st January, 2020, this court delivered its Judgment in this matter. In the Judgment, the court dismissed the Plaintiff's suit on the ground that the Plaintiff had not proved his case on a balance of probabilities.

7. In the Affidavit, the Plaintiff has stated that he is waiting for the Court of Appeal to determine his Application to lodge the Notice of Appeal out of time. In a nutshell, the Plaintiff is acknowledging that currently, neither the Notice of Appeal nor the Appeal itself has been lodged in the Court of Appeal.

8. It is trite that under Order 42 Rule 6(2) of the Civil Procedure Rules, an order of stay of execution can only be granted by this court as and when a valid Notice of Appeal has been lodged in this court. Indeed, having admitted that there is no valid Appeal or Notice of Appeal filed, the Plaintiff is not entitled to an order of stay.

9. Even if the Plaintiff had lodged a Notice of Appeal within the requisite time, an order staying the execution of the Judgment of this court would still not have been issued. This is so because the Judgment that this court delivered on 12th February, 2021 is negative in its nature. The said Judgment is not capable of being executed except for costs.

10. That being so, it is my finding that the Application dated 12th February, 2021 is unmeritorious. The Application is dismissed but with no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN MACHAKOS THIS 11TH DAY OF JUNE, 2021.

O. A. ANGOTE

JUDGE