



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

ELC APPEAL NO. 1 OF 2021

KAMECHWA LONGURA LOMORMOI..APPELLANT

VERSUS

STEPHEN LUVUBI *alias*

STEPHEN LUBUSI AMBAKO.....RESPONDENT

RULING

The Application

1. By a notice of motion dated **27/4/2021** and filed on **28/4/2021** brought under provisions of **Sections 1A, 1B and 3A** of the **Civil Procedure Act**, the appellant seeks the following orders:-

(1) ...spent

(2) That this honourable court be pleased to issue an order for stay of proceedings in KAPENGURIA ELC NO. 23 OF 2019, pending hearing and determination of this appeal.

(3) ...spent

(4) That costs be provided for.

2. The application is supported by the supporting affidavit of the appellant sworn on **27/4/2021**. The grounds upon which the appellant relies on are that the appeal herein raises substantial issues and that the lower court has listed the matter for hearing for taxation.

The Response

3. The respondent filed a replying affidavit sworn on **4/5/2021**. His response is that the application has been brought after inordinate delay and that no evidence of substantial loss has been shown. It is stated that the application for stay is a ploy to delay the respondent from enjoying the fruits of his judgment.

4. The Appellant's Supplementary Affidavit.

5. The appellant filed supplementary affidavit sworn on **14/6/2021**. He depones that the appeal though filed is yet to be determined; that execution is likely after taxation; that if the appeal does not succeed the respondent would have a chance to execute the judgment of the lower court against the appellant thereafter.

6. I have considered the instant application and found that there is an appeal in place which has not been heard and determined and so the process of execution ought to be stayed pending the hearing and determination of the said appeal.

7. I therefore grant the application dated **27/4/2021** as prayed in **prayer no 2** thereof. For the avoidance of doubt, all execution in the lower court suit that is **Kapenguria PMCC Land Case NO. 23 OF 2019** is hereby stayed pending the hearing and determination of the appeal filed against the judgment of the lower court in that case.

It is so ordered.

DATED, SIGNED AND DELIVERED AT KITALE VIA ELECTRONIC MAIL ON THIS 5TH DAY OF AUGUST, 2021.

MWANGI NJORGE

JUDGE, ELC, KITALE.