



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CASE NO. 10 OF 2021

CHRISTINA NEBO ARAP KENI.....PLAINTIFF

VERSUS

THOMAS CHELULE.....DEFENDANT

RULING

By a Notice of Motion dated 16th December, 2020 the Appellant / Applicant sought for the following orders: -

1. Spent

2. Spent

3. That this Honourable court do order a stay of execution of the Ruling and order made by Hon. D. K. Matutu, Principal Magistrate, in Kilgoris ELC No. 102 of 2018 THOMAS CHELULE vs. CHRISTINA NEBO ARAP KENIK delivered on 27th February 2020 delivered by Hon. Oanda, Principal Magistrate pending the hearing and determination of the Appellant's appeal herein.

4. That the Honourable court be pleased to issue such further Orders as it may deem fit in the interests of justice.

5. That the costs of this Application be provided for.

The said Application is based on the grounds that the trial court in its judgment had directed the Appellant to surrender his original title deed and to sign transfer forms within twenty-one (21) days and further that she has an arguable Appeal with high chance of successes. The Application was supported by the Affidavit of the Appellant in which she averred that the said Application herein had been brought without undue delay and that unless the same is allowed she risks losing her Land and further that no prejudice will be occasioned to the Respondent in the event the application is allowed.

The Application was opposed by the Respondent by way of a Replying Affidavit in which he deponed that the Appellant is yet to file an Appeal. He further stated that upon judgment being delivered and the Appellant directed to sign the transfer forms and her subsequent refusal he took the said Forms to the Court Administrator and the same signed and the suit property registered in his names. The Respondent further stated that the subject land has been sub-divided and hence the instant Application has been overtaken by events and the Application for stay of execution is baseless and that the same is only meant to deny him the fruits of his judgment.

I have considered the application before me, the Replying Affidavit in opposition to the same and the submission filed by the parties and the issue for determination before me is whether the Applicant have satisfied the grounds for granting of stay of execution pending the hearing and determination of a substantive Appeal. In the instant application it is the Applicant contention that the Application before court was filed without undue delay and that there is need to preserve the suit land. The Respondent on the other hand states that the Applicant had waited over ten (10) months to mount the instant Application and that there was undue delay on the part of the Applicant the Respondent further contend that the Applicant did not demonstrate that they would suffer substantial loss.

Lastly, the Respondent contends that the suit was transferred and registered in his name after the Respondent refused to sign a copy of the transfer forms and hence the suit parcel of land was subdivided.

Having considered Application, the issues for determination before me is whether: -

i) Application was filed without undue delay

ii) Will substantial loss be occasioned

iii) Whether the Applicant has satisfied the conditions for granting of stay of execution.

Order 42 Rule 6 (1)(2) of the Civil Procedure Rules provides:

From the above it is clear that a party must satisfy that substantial loss will occur, in the instant case the Applicant did not quantify the value of the land. I am alive to the fact that land in Kenya is highly emotive and loss if any will cause an individual loss and further or whether the Application was made without undue delay. I find that the judgment in the matter was delivered on 27/2/2020 and this was just about the time Covid had hit the country and therefore under the prevailing circumstances. I find that the delay in filing this application was justified.

On the Respondent assertion that the subject suit land had already been registered in his name and the same subdivided, I find no evidence to substantiate the said claim as the respondent neither attached copies of the executed transfer forms or the mutations showing the subdivision and I consequently, find that there is need to preserve the subject land pending the hearing and determination of the Appeal.

The upshot if the above is that I find the Notice of Motion dated 16/12/2020 as merited and I will allow the same.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MIGORI THIS 30TH DAY OF NOVEMBER, 2021

MOHAMED N. KULLOW

JUDGE

Ruling delivered in the presence of: -

Nonappearance for the Plaintiff

Nonappearance for the Defendant

Tom Maurice -Court Assistant