



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC CAUSE NO. 266 OF 2017

NAREIYO KORIATA PLAINTIFF

VERSUS

DISTRICT LAND REGISTRAR NAROK NORTH.....1ST RESPONDENT

PROVINCIAL SURVEYOR, RIFT VALLEY PROVINCE2ND RESPONDENT

DISTRICT SURVEYOR NORTH/ SOUTH DISTRICT3RD RESPONDENT

NADUATARI KORIATA.....INTERESTED PARTY

RULING

This Ruling is related to the Notice of Motion Application dated 15th August, 2018 in which the Applicant is seeking the following Orders:-

1. Spent.
2. That pending inter-parties hearing of this application, this Honourable Court be pleased to stay execution of the Order / Ruling delivered on 19th April, 2018 and all consequential Orders thereof;
3. That pending hearing and determination of the appeal herein, this Honourable court be pleased to stay execution of the Orders / Ruling on 19th April, 2018 and all consequential orders thereof;
4. That costs of this application be provided.

The application is premised on the grounds and the Supporting Affidavit of the Applicant sworn on 15th August, 2018 in which she avers that this court delivered a Ruling on 22nd December, 2018 in which no party was awarded costs. That this court became functus officio once the report was filed by the District Surveyor. Thereafter, through an oral application on 19/4/2018 the court awarded costs to the Interested Party. That being aggrieved by the said decision, the Applicant has filed an appeal against the said decision. The Applicant further avers that the Interested Party has now commenced the process of execution and as a result, she will suffer substantial loss. That no party will suffer prejudice if the application is allowed and since execution is imminent it would be in the interests of justice if the application is allowed. The Applicant herein has attached copies of the District Surveyor's Report dated 22/2/2018 and marked as 'NK 1', the Notice of Appeal marked as 'NK2' dated 2nd May, 2018 and the 1st Interested Party Bill of Costs dated 19th July, 2018 and marked as 'Nk3'.

The Application is opposed by the Replying Affidavit of the 1st Interested Party sworn on 17th September, 2018 in which she avers that this court did not award cost on 22nd December, 2017 when it delivered its ruling. That it was after the Surveyors Report was brought before court that she was awarded costs. She further contends that costs follow event and therefore the Application is premature since the costs have not been taxed. That the intended Appeal is incomplete since there is no determination by the Deputy Registrar as regards costs and therefore the Application should be dismissed.

I have analysed the application, Replying Affidavit and the submissions filed by the parties herein and the issue for determination is whether the Applicant is entitled to stay of execution Orders Pending Appeal.

It appears to me that parties did not agree on costs which then prompted the 1st Interested Party to file a Bill of Costs dated 19th July, 2018. Order 42 Rule 6 provides as follows:-

(2) No order for stay of execution shall be made under subrule (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.”

The Court of Appeal in *Butt v Rent Restriction Tribunal* (1982) KLR 417 provides guidance on how a court should exercise discretion and held that:-

1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
3. A judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of proceedings.
4. The court in exercising its discretion whether to grant (or) refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount or rent in dispute and the appellant had an undoubted right of appeal.
5. The court in exercising its powers under Order XLI Rule 4 (2)(b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”

By a Ruling dated 19/4/2018 this court made the following orders:-

“On the issue of costs on the Judicial Review application even though I had not expressly pronounced myself on the issue of costs in the ruling dated 22/12/17 costs ordinarily follow the event and I will thus award the costs of the Judicial Review to the interested party to be taxed by the Deputy Registrar on the event that parties fail to agree on the same.”

The Interested party filed a Bill of Costs dated 19/7/2018 whereas the Application filed stay of proceedings of taxation on 15/8/2018. In essence, what the Applicant this court to do is to stay any proceedings of the Bill of Cost pending Appeal at the Court of Appeal.

Paragraph 10 of the Advocates (Remuneration) Order 2009 provides:-

“The taxing officer for the taxation of bills under this Order shall be the Registrar or a District of Deputy Registrar of the High Court or, in the absence of a Registrar, such other qualified officer as the Chief Justice may in writing appoint; except in respect of bills under schedule 4 of the Order the taxing Officer shall be the Registrar of trade marks or any Deputy or Assistant Registrar of Trade Marks.”

In *Republic v Jubilee Party & Another Exparte Wanjiku Muhia & Another* (2017) eKLR, Hon., Justice Odunga held: -

“Once jurisdiction has been conferred on a particular body, the said body should be allowed to handle and determine the matter before it being taken before any other forum.

In the case of *Tom Ojienda & Associates v Mumias Sugar Company Limited & Another* (2018) eKLR, Hon. Justice Makau held:-

“I therefore, having found that the Deputy Registrar has jurisdiction to entertain the taxation matter before her, find it reasonable and justified to let the Registrar have the opportunity to deal with all matters that have been presented before her by either taxing the bill of cost or struck it out or dismiss it. This court cannot interfere with eh exercise of Deputy Registrar’s jurisdiction for no apparent reason.”

Having stated the above, I find no sufficient reason to stay the Deputy’s Registrar’s function of taxing a Bill of Costs. I therefore, decline the invitation to interfere with her role. The Notice of Motion dated 15/8/2018 is hereby dismissed. I hereby direct that the file be placed before the Honourable Deputy Registrar for further directions.

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 Plaintiff

Nonappearance for Respondents

Tom Maurice- Court Assistant