



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT KAJIADO

ELC APPEAL NO. E010 OF 2021

KITAO OLE RUPANTE PARKINARO.....APPELLANT

VERSUS

KIZAMIZ ENTERPRISES LIMITED.....RESPONDENT

(Being an appeal of the whole ruling and order of the Honourable Kahuya I.M. (PM) dated 31st March, 2021)

BETWEEN

KITAO OLE RUPANTE PARKINARO.....PLAINTIFF

VERSUS

KIZAMIZ ENTERPRISES LIMITED.....DEFENDANT

RULING

(1) This appeal seeks to set aside the ruling of the Lower Court dated 31st March, 2021. It also seeks for costs.

(2) In the ruling of 31st March, 2021, the learned Magistrate dismissed an application for injunction filed by the appellant and dated 8th March, 2021.

(3) In the application of 8th March, 2021, the Appellant had sought to restrain the Respondent from digging and carrying away building stones from LR. NO. KAJIADO/KITENGELA/30255. The grounds for seeking the injunctive orders were that the Respondents had breached their agreement by chasing away the Appellants agents from the suit land. As a result they could not monitor the quantity of materials taken from the land yet this was necessary to determine how much money would be paid to the Appellant as per the lease agreement of 20/6/2020.

(4) The Respondent in his replying affidavit dated 24th March, 2021 denied chasing away the Appellants agents and blamed the Appellant for being too busy to attend the quarrying and harassing the Respondents workers.

(5) After considering the application in its entirety, the learned Magistrate found that the appellant had not made out a prima facie case with a probability of success and dismissed the entire application with costs.

(6) In addition to the memorandum of appeal, there is an application dated 7/4/2021 seeking a stay of execution of the orders and ruling dated 31st March, 2021.

The said application is supported by an affidavit with six (6) annexures which include a lease dated 20/6/2020, acknowledgement receipt and correspondence between the parties.

(7) The application by the appellant is opposed by the respondent who has sworn a replying affidavit.

(8) I consider that by deciding the entire appeal, the application dated 7/4/2021 will be rendered superfluous.

(9) I have carefully considered the entire record including the memorandum of appeal, the undisputed facts of the case, the record of the

lower court and the submissions by learned counsel for the parties dated 16th June, 2021 and 5th July 2021.

I find that the only question to be decided in this appeal is whether the learned Magistrate can be faulted for dismissing the Appellants application for injunction.

(10) I find that the learned trial Magistrate was right to dismiss the application for injunction dated 8th March, 2021 because the Appellant who was the applicant then did not establish a prima facie case with a probability of success.

From the evidence available to the learned Magistrate, it was not yet clear at that stage which party was to blame for misunderstanding that had arisen. Yet the burden of proof was on the Appellant to prove that he was not at fault.

He did not discharge this burden to qualify for the order of injunction.

(11) I dismiss the appeal with costs to the Respondents and direct that the suit proceeds before the same Court to conclusion, unless it is withdrawn or otherwise concluded.

Dated signed and delivered virtually at Kajiado this 17th day of November, 2021.

M.N. GICHERU

JUDGE