



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL NO. E053 OF 2019

M’KIRIKA KANORO.....APPELLANT

VERSUS

KAHAWA SELF HELP GROUP

(Suing through its officials).....1ST RESPONDENT

JACOB GATOBU MUUNA.....2ND RESPONDENT

STANLEY MUBICHI.....3RD RESPONDENT

BATHOLOMEW MWAKA.....4TH RESPONDENT

SHADRACK KINOTI.....5TH RESPONDENT

NICHOLAS MURIUNGI.....6TH RESPONDENT

RULING

1. Before the court is the application dated **12.10.2021** supported by an affidavit by **M’Kirika Kanoro**. It seeks stay of execution of the decree issued by the lower court on **17.2.2021** pending the hearing of this appeal.
2. The basis of the application is that there is apprehension of the respondent disposing of the subject land to third parties so as to render the appeal nugatory yet the appellant has a legitimate purchaser’s rights and is likely to be prejudiced. The substratum of the appeal may also dissipate unless the orders sought are granted.
3. The appellant further claims he has been occupying and utilizing the land with the full knowledge of the respondents who are unlikely to be prejudiced if the application is allowed.
4. The application is opposed through a replying affidavit sworn on 1.11.2021 by Stanley Mabichi on the grounds that there has been inordinate delay in lodging the application; no substantial loss has been demonstrated; as a successful litigant he is entitled to enjoy fruits of the decree; no decree has been extracted; a similar application was rejected on 9.9.2021; the appeal lacks merits; **Kshs. 600,000/=** general damages awarded in favour of the 1st respondent has not been paid and no security has been offered.
5. For the applicant to succeed, he has to show there is substantial loss, there was no inordinate delay in seeking the orders, an offer for security has been offered and lastly it is in the interest of justice the orders sought are granted. See **Giafranco Manenthi & Another –vs- Africa Merchant Assurance Co. Ltd [2019] eKLR, Butt –vs- Rent Restriction Tribunal [1982] eKLR 417.**
6. Courts have held it is not enough to just plead substantial loss on an impending execution since such an execution is a legal consequence out of a legal process See **James Wangalwa & Another –vs- Agnes Naliaka Cheseto [2012] eKLR.**
7. In **Charles Wahome Gethi –vs- Angela Wairimu Gethi [2008] eKLR** the court held that mere stating one lives and resides on the suit land was not enough, and that compelling reasons must be given as to why there should be a stay.
8. In the instant case, the lower court held the appellant was fraudulently sold and transferred **L.R No. Nkuene/Taita/1139** by the 5th and 6th respondents. The sale and transfer was nullified and order made for payment of general damages of **Kshs. 600,000/=**.

9. The appellant had not counterclaimed for the land in the lower court. He has not demonstrated what loss he is likely to suffer. Secondly, on the issue of general damages, he has not alleged the respondents would be unable to refund the same in the event he is successful in the appeal as held in *Kenya Hotels Properties Ltd. –vs- Willesden Investments Ltd. [2007] eKLR.*

10. Further the appellant has not offered any security for the due satisfaction of the decree such as depositing the impugned original title deed before this court or depositing the decretal sum in an interest earning account as held in *Alex Khalumba –vs- Harrison Anukutse [2019] eKLR.*

11. Lastly there has been inordinate delay in filing the application which has not been explained at all. In sum, I find the appellant has not met the threshold under **Order 42 rule 6** of the **Civil Procedure Rules**.

12. Given that this court must also consider the overriding objective as laid out under **Sections 1A, 1B & Article 159** of the **Constitution**, I order the applicant to deposit Kshs. 300,000/= in court together with the original title deed in court within 2 weeks from the date hereof. The appeal shall be set down for hearing within 3 months from the date hereof failure of which orders herein shall stand vacated. The record of appeal shall also be filed within 45 days from the date hereof.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MERU THIS 1ST DAY OF DECEMBER, 2021

In presence of:

Kiome for applicants

Mukaguru for 1st and 2nd respondents

Court Assistant - Kananu

HON. C.K. NZILI

ELC JUDGE