



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT HOMA BAY

CIVIL APPEAL NO. EO58 OF 2021

HESBON OMUNDI OSORO.....1ST APPLICANT

KENANI OCHARI.....2ND APPLICANT

VERSUS

COLETA OBIERO OBAMU.....RESPONDENT

RULING

1. The applicants moved the court by an application under certificate of urgency dated 12th July, 2021. They are seeking an order for stay of proceedings in Oyugis SPMCC NO. 180 of 2018 pending the hearing of the appeal intended to be filed.

2. The application was premised on the following grounds:

- a) That the appellants herein filed an application seeking among other orders that the respondent herein be subjected to undergo second medical examination to the appellants' doctor of choice.
- b) That the said application in OYUGIS SPMCC NO.180 OF 2018 COLLETA OBIERO –VS- HESBON OMUNDI & ANOTHER was dismissed vide a ruling delivered on 1st July 2021.
- c) The applicants being dissatisfied with the ruling dated 1st July 2021 filed the appeal herein.
- d) That the said matter is now slated for defence hearing on 15th July 2021.
- e) That there are no orders of temporary stay of proceedings in force and the applicants are apprehensive that the respondents will proceed with the said hearing if an order for stay of proceedings is not granted rendering the appeal nugatory.
- f) In such event, the defendants/applicants herein stand suffer irreparable loss and damage if the orders sought in the application herein are not granted.
- g) The appellants implore this honorable court to adhere to natural justice, doctrines of equity and the constitution in this matter as the appellants right to a fair trial stands to be substantially prejudice should the orders sought herein be disallowed.
- h) The appellants/applicants have to come to court within a reasonable period of time and without undue delay.
- i) The application will not occasion any prejudice to the respondent herein.
- j) That this application is made in good faith, timeously and it will be in the interest of justice that the same be allowed.

3. The respondent opposed the application on the following grounds:

- a) That this application lacks merit and the same ought to be dismissed with costs.
- b) That OYUGIS SPM CC.NO.180 OF 2018 was filed and served upon the Respondents on the 22/11/2018.

- c) That in fact the plaintiff/respondent did produce her documents and gave evidence on the 21/11/2019 by consent.
- d) That the applicant did comply with the rules and filed the defendant's list of documents and list of witnesses.
- e) That the applicants herein are only interested in having this matter delayed for no good reason.

4. Before hearing or any civil matter commences, parties file all the relevant documents they intend to rely on. It was at this juncture the applicants ought to have applied for a second medical opinion if they were apprehensive that the medical report to be relied on was suspect. The applicants cannot wait until the respondents case is closed to make the application. It is not enough to say that they made several applications for the same. They ought to have sought the court's assistance.

5. I therefore find that the trial court was justified to dismiss the application. I accordingly find no merits in the current application and dismiss it with costs.

DELIVERED AND SIGNED AT HOMA BAY THIS 8TH DAY OF DECEMBER, 2021

KIARIE WAWERU KIARIE

JUDGE.