



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 16 OF 2017

FORMERLY NAKURU ELC CAUSE NO. 27 OF 2012

IN THE MATTER OF THE LIMITATION OF ACTIONS ACT (CAP 22) LAWS OF KENYA

AND IN THE MATTER OF THE LAND REGISTRATION ACT, 2012

AND IN THE MATTER OF LAND REFERENCE NAROK/TOWNSHIP/163

AHMED ABDI MURASA.....PLAINTIFF

-VERSUS-

ZAKARIA NJENGA KAMITI.....1ST DEFENDANT

KONENE NARANKAIK.....2ND DEFENDANT

RULING

By a Notice of Motion dated 18/9/2019 the 1st Defendant/Applicant sought for orders that there be an extension of a stay of execution granted on 19/7/19 pending the hearing of the application for stay of execution filed in the court of Appeal and in the alternative there be a stay of execution of the decree pending the hearing of the appeal. The application is based on the grounds that the suit property is developed and in the event that the stay is not granted the applicant will lose colossal sum of money. That the Application was made without undue delay and the intended appeal is not frivolous and that it shall serve the interest of justice if the stay of execution is granted in favour of the Applicant.

The Application was opposed by the Plaintiff/Applicant who contended that the Application is devoid of any merit and an abuse of the process of the court. The Respondent contends that the applicant has by his own admission stated that they have filed an identical application before the court of appeal and hence the instant application is sub judice.

The Respondent also averred that the applicant has been undertaking construction works on the suit land even after the judgement was entered.

I have considered the application before and the submissions filed by the parties and what is there for determination before me is whether the applicant has satisfied the grounds for the grant of discretionary orders of stay of execution. However, the respondent has contended that there is a similar application for stay of execution which is pending before the court of appeal and therefore the instant application is sub divided and as the matter proceeds, I should be able to dispose off whether the application is sub judice and if so then the application becomes untenable.

Under section 6 of the Civil Procedure Rules no court shall proceed with the trial of any suit or proceedings which matter in issue is directly or substantially in issue in previously instituted suit or proceedings before the same party.

In the instant application the applicant has admitted that there is a similar application for stay of execution pending in the court of appeal. As a matter of fact I had granted the applicant stay of execution pending the filing of their appeal and further granted them a further stay of 60 days. Now that their appeal has been formalized and there is an application for stay pending the appeal before the Court of Appeal, my jurisdiction on the matter has been ousted as the matter is now properly before the court of appeal and in the circumstances I find that the instant application before me is sub judice and the same is no longer tenable before me and I dismiss the same with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this 27TH day of **FEBRUARY, 2019**

Mohammed Kullow

Judge

27/2/2020

In the presence of:-

CA:Chuma/Kimiriny

N/A for the parties and advocates

Mohammed Kullow

Judge

27/2/2020