



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT NAROK

ELC APPEAL NO. 27 OF 2019

LETUTUI NKEDIANYE & 3 OTHERS.....APPELLANTS

VERSUS

JOHN SAKAJA NTUKUSOI.....RESPONDENT

RULING

By a Notice of Motion dated 25th October, 2019 the Appellant Applicant had sought for orders: -

1. Spent
2. Pending the hearing and determination of the instant application the court be pleased to grant an interim order of stay, staying the proceedings and/or further proceedings vide Kilgoris PMC ELC No. 13 of 2018 and in particular, the hearing of the Notice of Motion Application dated 12th September, 2019, now scheduled for the 3rd day of December, 2019 and/or any other date.
3. The court be pleased to grant an order of stay, staying the proceedings and/or further proceedings vide Kilgoris PMC ELC No. 13 of 2018 pending the hearing and determination of this appeal.
4. Costs of the application be borne by the respondent
5. Such further and/or other orders be made as the court may deem fit and expedient.

The Application was based on the grounds that by a Notice of Motion dated 30/3/16 sought orders of temporary injunction against the Respondent from trespassing on land parcel Plot No. 212 in Nkararo Adjudication Section in which the maintenance of status quo was granted was made by the court on 21st April, 2016, however the Respondent later filed a Notice of Preliminary Objection on 18th February, 2019 which was dismissed by court on 24th September, 2019 and it is the dismissal of the said preliminary objection that resulted in the filing of the instant application which alleges that the trial court lacked jurisdiction to hear and determine the matter before it.

The Appellant further contend that they have an arguable appeal with a probability of success and thus seek to stay the proceedings before the lower court pending the hearing and determination of the appeal and unless the orders sought are granted the appeal shall be rendered nugatory.

The Application was opposed by the respondent by way of a replying affidavit who contend that the appellant had not filed any application for stay of proceedings at the Kilgoris Law Courts contrary to the provisions of the Civil Procedure and that no sufficient reasons have been given. The respondent further contends that the appellants have not demonstrated that they shall suffer substantial loss if the application is not allowed. It is the Respondent's further averment that the Applicants should first purge the contempt before seeking for orders of the court.

I have considered the application and the submissions filed by the parties. The Appellants argue that their intended appeal raises substantial issues of law touching on the capacity of the respondent to commence the suit before the Kilgoris Law courts and unless the orders of stay is granted the Kilgoris Court may hear and ultimately make a determination before the Appeal herein is heard and determined and hence the appeal rendered worthless.

The Respondent on his part contends that the Appeal is incompetent as the Appellant has not sought leave of the court immediately after the ruling was delivered. They further contend that the Kilgoris Law Courts had jurisdiction to hear the suit matter.

From the above therefore what is for the court to determine is whether the Appellant has satisfied the established conditions for the grant of orders of stay pending appeal. From the Memorandum of Appeal that was filed, the appellants have listed various issues chief among them being that the lower court lacked jurisdiction to hear and determine the preliminary objection and the entire suit before it.

This is a matter in which the subject land is still under adjudication process. I will not discuss the merits of the Preliminary Objection but actual glance at all the provisions of the Land Adjudication Act provides for mechanism where disputes are resolved and consequently the jurisdiction of the trial court and the High court both are ousted from interfering with the process of Land Adjudication and I find that it will serve the interest of justice if the Appellant is allowed to argue his appeal and in the event that a stay is not granted for the process of appeal to proceed then the said appeal will be rendered worthless.

The upshot of the above is that the notice of motion dated 25/10/19 is allowed and I order that there be a stay of proceedings in Kilgoris PMC ELC No. 13 of 2018 pending the hearing and determination of the appeal.

The cost of the application be in the cause.

DATED, SIGNED and DELIVERED in open court at NAROK on this 26TH day of FEBRUARY, 2020

Mohammed Kullow

Judge

26/2/2020

In the presence of: -

CA:Chuma/Kimiriny

Mr Ombati holding brief for Sagwe for the Respondent

Adala for Ogutu for the Appellants

Mohammed Kullow

Judge

26/2/2020