



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. 15 OF 2019

TIAPUKEL OLE PARKIRE.....APPELLANT/APPLICANT

-VERSUS-

DOPOI MONYIS NASIEKU.....RESPONDENT

RULING

The Appellant/Applicant had by a Notice of Motion dated 5th August, 2020 seeking for orders of stay of execution arising from the judgment of the court that was issued on 22nd July, 2019 on the grounds that the process of execution was commenced against the Appellant and further that the Appellant has applied for and has not yet received copies of proceedings, judgement and ruling in the matter and lastly the appeal varies highly in issues of law and facts.

The Application was supported by the affidavit of the Appellant in which he stated that the Respondent has commenced the process of executing the judgement against him and in the event that the application is not allowed he will suffer irreparable loss and damages.

The Application was opposed by the Respondent by way of a replying affidavit in which he contends that, the Appellant's Application was overtaken by events and that since the matter was heard and determined by a competent court it will be just and fair that he is allowed to enjoy the fruits of his judgement.

I have read the Application before me and the submissions filed on behalf of the Defendant/Respondent. The Appellant though given the chance to file his submissions has failed to do so.

The grounds upon which the grant of stay of execution was granted is now well settled. A party seeking stay should demonstrate that he will suffer irreparable loss in the event that stay orders are not granted, one must also demonstrate that the Appeal has overriding chance of success and lastly that the application has been made without undue delay. The grounds are what is stated in under order 42 Rule 6 (2) of the Civil Procedure Rules.

From the Application and the Affidavit in support of the same I find that the instant application was not made without undue delay. The Appellant had filed the Application on 8/8/2019 even though Judgment in the matter was delivered on 13/3/19 and he made several other applications.

On whether The Appellant has met the other grounds as contemplated under order 42 (6) of the Civil Procedure Rules, I find that the Appellant has not demonstrated that he will suffer substantial loss if not granted the orders sought and further that the Appellant has not even demonstrated that he is in occupation of the suit land and his eviction will render him landless.

From the foregoing therefore I find that the application is not merited and the same is dismissed with costs.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **24th** day of **February, 2020**

Mohammed Kullow

Judge

24/2/2020

In the presence of: -

Mr. Kilele for the Appellant/Applicant

N/A for the Respondent

Mohammed Kullow

Judge

24/2/2020