



Vipingo Properties Limited v Tindika & another (Environment & Land Case Case45 of 2018) [2020] KEELC 3991 (KLR) (13 February 2020) (Ruling)

Vipingo Properties Limited v Randolph Tindika & another [2020] eKLR

Neutral citation: [2020] KEELC 3991 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE CASE45 OF 2018**

M SILA, J

FEBRUARY 13, 2020

BETWEEN

VIPINGO PROPERTIES LIMITED PLAINTIFF

AND

RANDOLPH TINDIKA 1ST DEFENDANT

THE REGISTRAR OF TITLES 2ND DEFENDANT

RULING

(Application for stay of proceedings pending appeal; principles to be applied; application filed after lapse of 88 days; held that the same was filed after unreasonable delay; neither is there any substantial loss demonstrated; application dismissed)

1. The application before me is that dated 11 October 2019 filed by the respondent in this Originating Summons (who for ease of reference I will simply refer to as the defendant). The application seeks orders of stay of these proceedings pending the hearing and determination of an appeal filed to the Court of Appeal against the ruling delivered on 18 July 2019. The application is opposed.
2. To put matters into context, this suit was commenced through an Originating Summons which was filed on 30 October 2018. The applicant in the Originating Summons (who I will simply refer to as the plaintiff so as to avoid confusion with the applicant in this application) sought orders to lift the caveats placed against the titles CR Nos. 60182, 60661, 60660, 60662, 60663, and 60843 in respect of the properties land reference numbers 5025/236, 5025/239, 5025/240/ 5025/241, 525/241, 5025/242 and 5025/249 (the suit properties). The supporting affidavit to the Originating Summons is sworn by one Abdulla Mohamed Hussein, who has averred that the plaintiff is the registered proprietor of the suit properties and that in December 2014 and sometimes in 2015, the plaintiff entered into an agreement to sell the properties to the defendant. It is averred that the defendant paid a sum of Kshs.



- 12,311,070/= as deposit but failed to raise the balance and thus the agreement was rescinded and the deposit forfeited. He deposed that the defendant then registered caveats against the properties and it is these caveats which the plaintiff wants lifted.
3. The defendant filed a Replying Affidavit to oppose the Originating Summons. The defendant also filed a Notice of Preliminary Objection where he argued that the suit is incompetent for reasons that this court has no jurisdiction and for want of an authority to plead. He also raised issues that the plaintiff failed to fulfil its part of the bargain and that the plaintiff failed to avail the completion documents. That preliminary objection was heard and dismissed through the ruling of 18 July 2019. Aggrieved, the defendant filed a Notice of Appeal on 31 July 2019 and subsequently filed this application for stay of proceedings pending appeal.
 4. I have taken note of the submissions counsel for the plaintiff, and the defendant, who is an advocate acting in person, alongside the authorities they provided, before arriving at my decision.
 5. In an application such as this, the provisions of Order 42 Rule 6 (2) apply and the same provides as follows :-
 - (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
 6. The defendant thus needs to satisfy three things :-
 - i. That the application has been made without unreasonable delay;
 - ii. That substantial loss will be suffered by the applicant if the application is not allowed;
 - iii. That there is an offer of security.
 7. On the first issue, that of delay, it was submitted by counsel for the plaintiff that this application was made 87 days after the ruling and this delay has not been explained. I note that the ruling complained of was delivered on 18 July 2019. This application was filed on 14 October 2019. I have gone through the affidavits of the defendant and nowhere has he explained why it took him 87 (or is it 88) days to file this application. In my view that delay is inordinate and there being no explanation why it had to take the defendant this number of days to file this application, my holding is that this application has been brought after the lapse of unreasonable delay. Upon that reason alone, this application must fail.
 8. I need not consider the other grounds, but just in case I am wrong on the aspect of unreasonable delay, I have not seen what substantial loss the defendant will suffer by not being granted stay. What was dismissed was a preliminary objection on the issues that the defendant raised. What the defendant now wants is a stay of proceedings. I wonder what substantial loss the defendant will suffer if the suit proceeds so that all issues can be heard. There is no money that he is going to lose, and actually no prejudice will be occasioned to him for he is at liberty to raise the issues in his preliminary objection in the course of the proceedings. In his arguments, the defendant submitted that the Court of Appeal may reverse the order of 18 July 2019. That may be so, but we cannot speculate, and the reason that there may be a reversal is not by itself reason to stay proceedings. There must be a demonstration of substantive loss, which I am unable to see, by this matter proceeding.



9. Given the above, it will be seen that I do not find merit in this application and it is hereby dismissed with costs.

DATED, SIGNED AND DELIVERED AT MOMBASA THIS 13TH DAY OF FEBRUARY, 2020.

MUNYAO SILA,

JUDGE.

In the presence of:

Mr. Tindika ; Applicant

Mr Odongo holding brief for M/s Kaplan & Stratton Advocates for the respondent.

Court Assistant; David Koitamet.

