



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MURANG'A

CIVIL APPEAL NO. 53 OF 2018

JOHN GACHUNGA NJOROGE.....APPELLANT

VERSUS

JOSEPH NJOROGE MWANGI.....RESPONDENT

RULING

1. The appellant prays for *stay* of the order of the lower court pending the hearing and determination of this appeal.
2. The impugned *order* was made on 27th September 2018 in *Kigumo Resident Magistrates Court Civil Case 24 of 2010*. The subordinate court first issued a warrant of arrest against the appellant on 27th July 2018. The appellant then filed a notice of motion to *set aside* the order; and, to respond to the initial *Notice to Show Cause*.
3. The learned trial magistrate *declined* to stay or set aside the orders. Instead, she ordered the appellant to pay the disputed costs at the peril of committal to civil jail.
4. The appellant was aggrieved and lodged this *interlocutory appeal*. Pending the hearing of the appeal, he filed a notice of motion dated 11th October 2018 to *stay* the impugned order.
5. The appellant avers that he was *not* heard; and, that he has a good defence to the *Notice to Show Cause*. Ultimately, he contends that the appeal is *arguable*; and, that unless stay is granted, he will suffer great prejudice.
6. The motion is contested. There is the replying affidavit sworn by the respondent on 6th December 2018. The respondent has also filed a *preliminary objection* dated 19th December 2018. The gist is that the appeal falls within the mandate of the *Environment and Land Court*.
7. On 20th December 2018 learned counsel for all parties addressed the court on the *preliminary objection*.
8. Jurisdiction is everything. *Owners of the Motor Vessel "Lilian S" v Caltex Oil (Kenya) Limited* [1989] KLR 1. The *substratum* of the dispute in the lower court revolved around *land*. I am fortified because the appellant lodged an appeal at the *ELC Court at Nyeri Appeal No. 5 of 2015*.
9. True, the appellant has since paid the decretal sum. The contest now revolves around the issue of *costs*. But obviously, the present *interlocutory appeal* should also have been lodged in the *Environment and Land Court*. See *Republic v Karisa Chengo & 2 others*, Supreme Court of Kenya, Petition No. 5 of 2015 [2017] eKLR.
10. I *uphold* the preliminary objection. In the interests of justice, I will *not* strike out the appeal. Instead, this appeal is hereby *transferred* to the *Environment and Land Court* at Murang'a.
11. Costs shall be in the appeal.

It is so ordered.

DATED, SIGNED and DELIVERED at MURANG'A this 14th day of February 2019

KANYI KIMONDO

JUDGE

Ruling read in open court in the presence of:

No appearance by counsel for the appellants.

Mr. Joseph Njoroge Mwangi, the respondent (in person).

Ms. Dorcas and Ms. Elizabeth, Court Clerks.