



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC NO. 1513 OF 2016

PETER GATHURI KARINGU.....PLAINTIFF

- VERSUS -

STEPHEN GATHUKU KINYANJUI.....1ST DEFENDANT

THE ASSISTANT COUNTY COMMISSIONER (NGENDA WARD)....2ND DEFENDANT

RULING

1.This is a ruling in respect of a notice of motion dated 25th March 2019. The Applicant seeks stay of execution pending appeal. The Applicant contends that Judgement in this case was delivered on 5th February 2018 and that he filed notice of appeal against the judgement on 16th February 2018. He moved to the Court of Appeal where he filed an application seeking to be allowed to appeal as a pauper. That application was allowed on 20th December 2018.

2. The Applicant argues that eviction orders against him were issued on 7th April 2018 but he came to know about the same on 20th March 2019. When he sought advice of an advocate, he was advised that he ought to have filed an application for stay in time. He states that failure to file the application in time was due to ignorance of court procedures.

3. The Applicant's application was opposed by the Respondent based on a replying affidavit sworn on 6th May 2019. The Respondent contends that the Applicant has not explained the delay of one year in filing this application; that no notice of appeal has been annexed to the application and that the appeal has no chances of success and further that he should not be prevented from enjoying the fruits of his judgement.

4. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue for determination is whether the Applicant has demonstrated that he should be granted stay. There are only three conditions which are required to be met in such kind of application. The first is that the application should be brought without unreasonable delay. The second is that there has to be demonstration of substantial loss. The third is that there has to be such security for the due performance of the decree as may ultimately be binding upon the Applicant.

5. In the instant case, judgement was delivered on 5th February 2018. This application was filed on 26th March 2019. There is a delay of over one year but the delay has been amply explained. The notice of appeal was filed within the time required. The Applicant then went to the Court of Appeal where he filed an application seeking to be allowed to appeal as a pauper. The Applicant was then acting in person and he may have not been aware that he ought to have filed an application for stay.

6. The Respondent has already obtained an order of eviction. The Applicant has been staying on the suit property since the 60's . If he is evicted and may be the property is sold to a third party, this will render the appeal nugatory. As was held in **Butt Vs Rent Restriction Tribunal (1982) KLR 417**, if there is no other overwhelming hindrance, a stay must be granted so that the appeal may not be rendered nugatory should the appeal court reverse the Judge's discretion".

I find that this is a proper case where stay of execution should be granted. I therefore allow the Applicant's application on condition that he deposits security for costs in the sum of Kshs.50,000/= in Court within 30 days failing which this stay shall automatically lapse.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 6th day of February 2020

E.O.OBAGA

JUDGE

In the presence of;-

Applicant in person

Court Assistant: Hilda

E.O. OBAGA

JUDGE