



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT NAROK**

**ELC CAUSE NO. 23 OF 2017**

**FORMERLY NAKURU ELC NO. 543 OF 2016**

**MOSES SANINGO NAIGURAN.....PLAINTIFF**

**-VERSUS-**

**GEOFFREY MAKANA ASANYO.....DEFENDANT**

**RULING**

The Plaintiff had by a Notice of Motion dated 19<sup>th</sup> March, 2019 sought for the following orders: -

1. That in the interest of justice the court be pleased to issue a temporary order of stay of its order of stay of proceedings in this suit given on the 14<sup>th</sup> May, 2018 for the purposes of prosecuting this application.
2. That pending the hearing and determination of this application interparties, the court be pleased to issue a temporary order of injunction to stop sale, transfer, alienation sub division or charging of Plot/No/ Trans Mara/Intona/5(The Lands Registrar Trans Mara be served with a copy of this order for registration).
3. That this court be pleased to enjoin Intona Investment Company Limited as a defendant in this suit
4. That pending the hearing and determination of this suit, the court be pleased to issue orders of injunction to stop sale, charging, transfer, alienation or sub division of Plot No. Trans Mara/Intona/5.
5. That the costs of this application be provided for.

The Application is based on the grounds that the defendant had registered a company Intona Investment company limited and had the suit land transferred to its name, which action is malicious and meant to defeat the ends of justice during the subsistence of the that the Defendant/Respondent is the sole director of the suit property. The application was also supported by the Affidavit of the applicant in which he averred that the respondent rather than wait for the outcome of the suit herein, the respondent on 29<sup>th</sup> June, 2019 has transferred he suit land to Intona Investment Company Limited after a caution was removed and he believes that the removal of the caution and subsequent transfer were not made in good faith thus necessitating the instant application.

The application was opposed by the Respondent who had filed grounds of opposition in which he contends that the application is premature, mischievous and bad in law. It is the applicant's contention that the court had granted a stay of proceedings in the matter on 16<sup>th</sup> October, and consequently the application is untenable and the court is devoid of jurisdiction to adjudicate upon the subject application. The Respondent further contends that the application does not disclose any cause of action and that there was inordinate delay.

I have considered the application before me and the submissions filed by the parties and the issues for determination before me are:-

- i. Whether the court has jurisdiction to hear and determine the instant application
- ii. Whether the application is res judicata

It is not disputed by the parties that on 16<sup>th</sup> October, 2018 by an application by the applicant herein the court stayed all proceedings in respect of the suit herein pending the hearing and determination of an appeal filed by the applicant herein.

The Applicant when filing the instant application has not demonstrated to the court that the order of stay of proceedings has been overtaken by event in that the appeal which necessitated the same was heard and determined by the court of appeal. When a court grants an order of stay of proceedings such a court is rendered functus officio until the court necessitating the stay of proceedings has been determined.

The Applicant having not shown that, then the jurisdictional power of the court is questioned. In the case of **PETER GICHUKI KINGARA -VERSUS- IEBC NYERI CACA NO. 2013** the honourable court stated:-

**“Jurisdiction is everything and without it the court must down its tools.....**

In **SAMUEL KAMAU MACHARIA & ANO -VERSUS-KCB AND 2 OTHERS (2012) EKLR** the court held that

**“A court jurisdiction either flows from the constitution or statute.....and without it a court cannot entertain any proceedings.**

In the instant application when a stay of proceedings has been granted pending the outcome of an appeal the n the jurisdiction of the court to entertain any further proceedings is ibnitio an illegality, more over the Applicant has even sought for an order of stay of proceedings of 16<sup>th</sup> October, 2018 which is itself untenable the applicant ought to have sought the court to either vacate and set aside the orders of 16<sup>th</sup> October, 2018 or seek for the prayers in the instant application before the court which is currently seized of the matter herein.

The upshot of the above finding is that this court lacks the requisite jurisdiction to hear and determine the applicioatn dated 19<sup>th</sup> March, 2019 and I consequently dismiss the same with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **12<sup>TH</sup>** day of **MARCH, 2020**.

**Mohammed Kullow**

**Judge**

**10/3/2020**

In the presence of: -

CA:Chuma/Kimiriny

N/A for the parties and advocates

**Mohammed Kullow**

**Judge**

**10/3/2020**