



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT NAROK**

**ELC APPEAL NO. 28 OF 2019**

**FRED WAFULA WAMALWA.....APPELLANT**

**-VERSUS-**

**LEPOSE LEBOO JULIUS.....RESPONDENT**

**RULING**

By a Notice of Motion dated 23<sup>rd</sup> October, 2019 the Applicant sought for orders of stay of execution of the decree made on 26<sup>th</sup> September, 2019 in Kilgoris SPMCC No. 83 of 2018. The Application was based on the grounds that the applicant being dissatisfied with the decision of the court and had filed an appeal before this court that the execution of the said decree in the absence of an order for stay of execution led him to suffer substantial loss and he had extensively developed the suit land, that the Appeal was filed without undue delay.

The application was opposed by the respondent by way of a replying affidavit in which he contends that the Applicant had obtained similar orders dated 30<sup>th</sup> October, 2019 at the Kilgoris Law courts and that the eviction had already taken place and further that the applicant had not made an application before the court that issued the decree. The respondent further contends that the applicant has not produced sufficient security.

I have considered the application before me and the submissions by the applicant. The court did not have the opportunity to see the respondent though he had been given time.

The grounds for the grant of orders of stay of execution is now well settled. A party must show that indeed he has an arguable appeal, that he will suffer substantial loss if the stay is not granted and the appeal and the application for stay were not filed without undue delay.

In the instant application whether the applicant has an arguable appeal will be determined at the hearing of the said appeal. However, since the applicant states that he has developed the suit land and had made substantial investment thereon which was not controverted by the respondent I find that if the application is not allowed he will suffer substantial loss. Further to the above I find that the application and the memorandum of appeal were filed without delay.

The upshot of my finding is that the application dated 23<sup>rd</sup> October, 2019 is merited and I accordingly allow the same.

Costs of the application be in the cause.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **4<sup>TH</sup>** day of **MARCH, 2020**

**Mohammed Kullow**

**Judge**

**4/3/2020**

In the presence of:-

CA:Chuma/Kimiriny

Mr Kilele holding brief for Maritim for the appellant

N/A for the respondent

**Mohammed Kullow**

**Judge**

**4/3/2020**