



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT MERU

CIVIL APPEAL NO. 111 OF 2019

FK.....APPELLANT/RESPONDENT

VERSUS

CMM.....RESPONDENT

R U L I N G

1. By his Summons in Chambers dated 10/9/2019 expressed to be brought under *section 30 of the Protection Against Domestic Violence, Act No. 2 of 2015*, the applicant sought orders of stay of the orders made on 27/8/2019 and 29/8/2019 in **Tigania P.M.C.C 74 OF 2019** pending the hearing and determination of the appeal.
2. The applicant sought other orders to the effect that the court varies, reviews or revokes and/or sets aside the order granted on 27/8/2019 in the said case and directs that the case be heard by any other Magistrate other than Hon. G. Sogomo Principal Magistrate.
3. The application was supported by the grounds on the face of the Summons and on the supporting affidavit of **FK** sworn of 10/9/2019. He deponed that the respondent was his wife with whom he has one child with. In March 2019, she deserted their matrimonial home after he raised alarm over her moral behavior. In August 2019, he filed for divorce whereby upon the respondent getting wind of the same, she filed the **Tigania Civil Suit No. 74 of 2019** seeking exclusive occupation of their home. That when they appeared in Court on 27/8/2019, his advocates applied for time to respond to the application but the lower Court proceeded to grant the respondent an order of exclusive possession.
4. The applicant complained that subsequent efforts by his advocates to be heard by the trial Court to either review its said order or otherwise were ignored by the said Court. That it is on the basis of the foregoing that he lodged the appeal herein and the present application. That the trial Court had ordered that the OCS Mikinduri does effect the aforesaid order which will amount to summary eviction without him being heard.
5. The application was opposed by the respondent through her replying affidavit sworn on 23/8/2019. She averred that she had to leave her matrimonial home with her children due to domestic violence meted out on her by the applicant. That this had increased her financial burden in addition to the fact that she had taken up a loan to develop her matrimonial home. She denied any bias on the part of the trial Court.
6. The respondent contended that the applicant had an alternative home to live with his two other wives. That the orders granted should be left to stand.
7. I have considered the affidavits on record. Although the Court ordered that the parties do file written submissions, no such submissions were filed by either of the parties. The Court notes however, that while the matter was pending this ruling, the firm of Messrs. Ndubi and Company Advocates for the applicant applied and were allowed to cease acting for the applicant.
8. This is an application for stay of execution pending appeal and for an order to disqualify the trial Court from further hearing the matter before it.
9. The principles applicable for grant of such orders are well known. The application must be made timeously, the applicant must demonstrate that he will suffer substantial loss if a stay is not granted and that he must offer security for the performance of the decree or order that will ultimately be binding on him.
10. The orders sought to be appealed against were made on 27th and 29th August, 2019, respectively. The present application was filed on 2/9/2019, barely 4 days after their making. There was no delay at all in the filing of the present application.
11. As regards substantial loss, the applicant alluded to the fact that the order as made did not specify the premises which he was to give vacant possession of and that it amounted to summary eviction from his residence. There is pending an application for him to be punished for disobedience of the orders appealed against.

12. The respondent contended that the orders were properly made. That they sought to protect her from violence in accordance with the law.
13. This Court notes that the orders were made the very first time the applicant appeared after service of the applicant upon him. His advocate had applied for time to respond to the same. The trial Court did not at the time know the response of the applicant. The applicant has alluded to the fact that the respondent had disappeared from the matrimonial home ever since March, 2019 until the filing of the application before the trial Court.
14. The order as made is not clear which premises the applicant is to give exclusive possession to the respondent. It is the cardinal principle of pleadings that a Court order must be specific and clear in its terms and unequivocal. The respondent did not either in her Plaint or Motion before the trial Court specify the property to be given vacant of. It is not expected that one is to search for it or rummage through in the affidavits or correspondence produced to discern the same. It should have been specifically set out in the prayers sought and the order given.
15. It has been alleged that the respondent has not been in the matrimonial home for about 4 months. All of a sudden, an order in the nature of a protection order is made which the applicant alleges will have the effect of summarily evicting him from his home. Since I am not hearing the appeal, I refrain from making any comments on the many aspects of the pending suit and appeal.
16. To this Court's mind, the applicant has demonstrated that unless the stay is granted, he shall suffer substantial loss.
17. As at the time of writing this ruling, the trial Court had already prepared the typed proceedings and forwarded its original file to this court. There is nothing preventing the applicant from lodging the appeal forthwith.
18. The foregoing being the case, I grant the order of stay on condition that the appeal is filed and served with 14 days of the date of this ruling. The same be prosecuted within 60 days thereafter, in default of any of the said conditions, the stay shall lapse.
19. As regards the application for the disqualification of the trial Court, there was no sufficient material that was placed before this court to warrant the granting of the said order. That prayer is accordingly declined.
20. The costs shall abide the outcome of the appeal.

It is so ordered.

DATED AND DELIVERED AT MERU THIS 5TH DAY OF DECEMBER, 2019.

A. MABEYA

JUDGE