



REPUBLIC OF KENYA



**KENYA LAW**  
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**Hapu v Parkire & another (Appeal 19 of 2019)  
[2020] KEELC 2114 (KLR) (27 May 2020) (Ruling)**

*George Laton Hapu v Ikote Ole Parkire & another [2020] eKLR*

Neutral citation: [2020] KEELC 2114 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**APPEAL 19 OF 2019**

**MN KULLOW, J**

**MAY 27, 2020**

**BETWEEN**

**GEORGE LATON HAPU ..... APPELLANT**

**AND**

**IKOTE OLE PARKIRE ..... 1<sup>ST</sup> RESPONDENT**

**AGRICULTURAL FINANCE CORPORATION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated 25/10/19 the Appellant /Applicant sought for orders for: -
  - (1) Spent
  - (2) Spent
  - (3) That an order for stay of execution of the judgment of the lower court delivered on 7<sup>th</sup> August, 2019 in ELC 39 of 2018 for a period of 30 days be issued
  - (4) That any other order that the court may deem fit and just
  - (5) Costs of and incidental to this application do abide the result of the intended appeal.
2. The Application is based on the grounds that the Magistrate court in ELC No. 39 of 2018 had ordered the cancellation of the Appellant's title deed and an order for stay of 60 days was issued by the court, however the decree of the court is yet to be extracted and served upon him and the six days for stay has since lapsed and unless the orders sought are not granted the respondent may move to execute the decree and thus make the appeal herein nugatory. The application was supported by the affidavit of the appellant.



3. The application was opposed by the 1<sup>st</sup> Respondent who avers that the application has been made in bad faith and is meant to deny him the fruit of his litigation and no sufficient cause has been given to enable the grant of stay of execution for 30 days and further that the Appellant has not shown how he will suffer substantial loss since he is not even in possession of the suit.
4. The respondent in his opposition to application further contended that the appellant does not need the decree to prepare and file his appeal.
5. I have read the application and the submissions made by both the parties. Order 42 Rule 6 of the Civil Procedure Rules outlines the grounds one must establish before the grant of stay of execution is granted and thus the court must satisfy itself that substantial loss may result to the appellant unless the stay is granted. Secondly the application must have been filed without undue delay and such security has been given by the applicant which must be binding.
6. In the instant application the applicant contends that he was granted a stay of 60 days by the lower trial court but the same has expired as he was not able to extract the decree and he is a bonafide purchaser for value of the suit land and unless the stay is granted he will suffer substantially. I have noted that the applicant had purchased the suit land and that a stay was granted by the lower court taking into account the circumstances of the case before it. I have not seen any other issue that the respondent has placed before court to make interfere with the stay granted by the lower court and furthermore, unless the stay is granted the respondent could greatly interfere with the suit and thus render the Appeal nugatory and in the circumstance the appellant will suffer substantial loss if the order of stay is not granted and I will thus allow the notice of motion dated 25<sup>th</sup> October, 2019.

**DATED, SIGNED AND DELIVERED IN OPEN COURT AT NAROK ON THIS 27TH DAY OF MAY, 2020.**

**MOHAMED KULLOW**

**JUDGE**

**27/5/2020**

In the presence of:

CA:Chuma

Mr Kinyanjui for the appellant/applicant

Ms Saika holding brief for Orege for the 1<sup>st</sup> Respondent

