



**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 Application before me is the Notice of Motion dated 14<sup>th</sup> May, 2018 seeking for an order of stay of proceedings pending the hearing and determination of an Appeal.

The Application was based on the grounds that the Applicant has preferred an Appeal against the Ruling of the court dated 4<sup>th</sup> April, 2018 and is desirous of the issues heard and determined in the court of Appeal and that the Applicant has good grounds of Appeal with a probability of success and unless the orders sought are granted his Appeal will be rendered nugatory and since the appeal has direct bearing on the issues before the court, then there should be a stay of proceedings in the matter.

The Application was supported by the Affidavit of Moses Saning'o Naiguran in which he depones that he has filed a Notice of Appeal against the decisions of the court dated 4<sup>th</sup> April, 2018. He further deponed that the stay of proceedings would ensure that the matter is heard and determined and a decision ought to be made whether Wangui Kimani Advocate is a necessary party to the suit herein. He further stated that it would be judicious to protect the interest of the estate to have a stay in the matter.

The Applicant further stated that the application was brought without delay and if the proceedings continue and the Appeal is allowed then valuable judicial time would have been wasted.

The Application was opposed by the Respondent who had filed a replying affidavit where he deponed that the Application here is meant to delay the expeditious hearing and determination of the subject matter. The Respondent in his affidavit had listed various instances and manner in which the applicant had attempted to delay the hearing and determination of the matter.

The Respondent further averred that the proceeding in the instant matter can continue irrespective of the intended Appeal and any orders made by the court of appeal shall be adhered to.

The Respondent has stated that the Applicant has filed the instant application after forty (40) days of delivery of the Ruling of the court and thus the same was lodged with unreasonable delay.

I have read the application before me and the submissions filed by learned counsel for the applicant and the respondent. This being an application for a stay of proceedings pending the Appeal the grounds for the granting of stay orders have been well settled.

In the instant application the application is based on the refusal of one Wangui Kimani advocate as a Defendant in the matter being dissatisfied with the decision, the applicant filed against the same. The inclusion of the said Wangui Kimani advocate has a direct bearing on the matter before me and in the circumstances, I will allow the applicant to exercise his right of Appeal against my decision and to enable the court of appeal make a determination of the matter.

In view of the above I will allow the application dated 14<sup>th</sup> May, 2018 in terms of prayer 2 thereof and I order that there be a stay of proceedings in the matter herein pending the hearing and determination of the Notice of Appeal dated 10<sup>th</sup> April, 2018.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **16<sup>th</sup> day of October, 2018.**

**Mohamed N. Kullow**

**Judge**

**16/10/18**

In the presence of:

Counsel for the parties

CA:Chuma