



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT NAIROBI
ELC MISC APPLICATION NO. 138 OF 2016

STANLEY NJUGUNA MBUGUA.....APPLICANT
AND

GEORGE KAMATU

SAMUEL ITUIKA

BEATRICE WANJIKU

WILSON CHEGE (suing through as the office bearers for and on behalf of the
members of LOYAL UNITED SELF HELP GROUP.....1ST RESPONDENT

AND

LUCKY SUMMER ESTATE COMPANY LIMITED.....2ND RESPONDENT

RULING

1. This is the notice of motion dated 15th July 2016 brought under Section 1A, 1B, 3A, 79 G and 95 of the Civil Procedure Act and all enabling provisions of the law.
2. It seeks orders:-
 - (1) *Spent.*
 - (2) *That this honourable court be pleased to stay execution of the judgment of the court issued by the Honourable C Obulutsa on 27th January 2015, pending hearing and determination of this application inter partes and the intended appeal.*
 - (3) *That an order be and is hereby issued for the enlargement of time to enable the applicant file an appeal against the judgment of honourable C Obulutsa in Civil Case No. 799 of 2009 delivered on the 27th January 2015.*
 - (4) *That the costs of this application be provided for.*
3. The grounds are on the face of the application and are set out in paragraphs 1 to 11.
4. The application is supported by the affidavit of Stanley Njuguna Mbugua, the applicant herein sworn on the 15th June 2016.
5. The application is opposed. There is a replying affidavit sworn by Wilson Chege Vice Chairman of the 1st respondent sworn on the 1st October 2019.
6. The parties informed the court that they wished to rely on their respective affidavits filed in court.
7. I have considered the notice of motion and the affidavit in support. I have also considered the replying affidavit.

8. The 1st respondent has annexed a plaint in Milimani CMCC No. 799 of 2009 as annexure “WC1”. In the said plaint, the 1st respondent had sued the applicant herein and Lucky Sumer Estate Company Limited. The prayers sought were:-

“(a) Kshs.160,000 with interest thereon at court rates from March 2003 till payment in full.

(b) Costs of this suit.

(c) Any other or further relief as this court may deem fit and just to grant”.

9. The applicant in his affidavit admits that he sold the said parcel of land to the 1st respondent whereupon the 2nd respondent issued a share certificate. He also admits that the 1st respondent sought a refund of his purchase price and that judgment was entered in favour of the 1st respondent.

10. The question before this court is whether in light of the foregoing, he has an arguable appeal. The applicant sold land to the 1st respondent who sued for a refund of the purchase price as the applicant did not grant vacant possession. The court agreed with the 1st respondent and ordered that the applicant herein do refund the purchase price. It appears to me that this is a straight forward matter which need not be prolonged.

11. The reasons given by the applicant for his failure to file appeal in good time is neither here nor there. There is no evidence that in deed his leg was amputated. I find that no sufficient grounds have been adduced to warrant this court enlarge the time for filing appeal. Litigation must come to an end.

12. In conclusion I find no merit in this application and the same is dismissed with costs to the 1st respondent.

It is so ordered.

Dated, signed and delivered in Nairobi on this 14TH day of MAY 2020.

L. KOMINGOI

JUDGE

In the presence of:-

No appearance for the Applicant

No appearance for the Respondents

Kajuju - Court Assistant