



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

MILIMANI LAW COURTS

ELC APPEAL NO. 46 OF 2017

EMBAKASI RANCHING COMPANY LIMITED.....APPELLANT

VERSUS

DORCAS AYOMA MBALANYA.....RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 17th July 2018. This Application which is brought by the Appellant/Applicant which seeks stay of execution of a decree issued in the Magistrates Court in Civil Case No.3215 of 2015 together with all consequential orders.
2. The Respondent had filed a suit against the Applicant in the Lower Court in which she sought an order of specific performance with an alternative prayer for compensation at market value. The Applicant did not enter appearance or file defence. The Respondent who had caused the suit property to be valued applied for entry of Judgement in default of defence. Judgement was entered in favour of the Respondent.
3. The Respondent moved to execute the decree. It is at this time that the Applicant moved to the Lower Court where it applied for stay of execution and setting aside the ex-parte judgement. The lower court granted stay of execution on condition that the Applicant paid half of the decretal sum to the Respondent within 30 days.
4. The Applicant has now come to this court seeking stay of execution pending appeal arguing that its application for stay before the lower court was dismissed; that it will suffer substantial loss should execution proceed; that it has an arguable appeal and that it should be allowed to be heard on merits.
5. The Respondent has opposed the Applicant's application based on grounds of opposition dated 26th July 2018 and a replying affidavit sworn on 26th July 2018 . The Respondent contends that this application is an abuse of the process of the court in that the Applicant failed to disclose that its application before the lower court was not dismissed but was allowed on condition that the Applicant deposited half of the decretal sum. There was no appeal against the orders of the magistrate on stay.
6. The Respondent argues that the offer of the suit property to her by the Applicant is coming too late and that if she took the offer, she might open herself to claims by other third parties because the Applicant is known to allocate one plot to several persons who are then left to fight each other in court.
7. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the Applicant. The parties had been given timelines for filing submissions but at the time of writing this ruling, it is only the Applicant who had filed written submissions.
8. It is clear that the Applicant had been granted a conditional stay in the Lower Court. The Applicant did not meet the conditions for stay. Instead, the Applicant has come to Court seeking a fresh stay from this Court. The Applicant is not appealing against the conditional stay granted. I find that this is an abuse of the Court process. The Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, Signed and delivered at Nairobi on this 7th day of May 2020.

E.O.OBAGA

JUDGE

In the absence of parties who had been notified of the date of delivery of Ruling.

Court Assistant: Hilda

E.O.OBAGA

JUDGE