



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT KITALE

SUCCESSION CAUSE NO. 191 OF 2006

IN THE MATTER OF THE ESTATE OF KIPERENGE PAPAREWA MIAPEN
.....DECEASED

AND

BENSON CHAMPU KAPEREWUAPPLICANT/PETITIONER

VERSUS

REBECCA CHEPKUTO KIPERENGE.....RESPONDENT/OBJECTOR

RULING

By the application dated 22/10/2016 the applicant prays that

(1) pending the determination of an appeal at the Court of Appeal there be stay of the enforcement of the orders dated 26/5/2016 emanating from this court.

The same is supported by the sworn affidavit of Benson Chamu Kaparewo sworn on the even date together with the attached annexures. Substantially the applicant avers that should this court orders of 26/5/2016 be effected he stands to suffer loss and damage and the intended appeal rendered nugatory. He further argues that he has been on the land for the last 7 years thus the status quo ought to be maintained.

On her part the respondent through her replying affidavit dated 21/11/16 as well as the grounds of opposition has opposed the same. She argued that the applicant's intention is to continue perpetrating the wastage of the land which he has in fact been doing by selling it partially. She further argues that it would be safe and appropriate for the title deed to remain under the custody of the Deputy Registrar.

The parties have further filed respective submissions in supporting their position which I have had the benefit of perusing. The usual grounds required under Order 42(6) (2) of the Civil Procedure Rules in such application are three, namely that there shall be substantial loss should the application not allowed; that the application has been brought without undue delay and that if need be a security be provided pending appeal.

I am satisfied that the application has been brought without undue delay. Already there is evidence that the applicant has filed and served a record of appeal.

As to whether the applicant shall suffer any loss, I find the same meritorious. Should the title be cancelled as ordered by this court and the Court of Appeal reverses the decision I find that great loss shall be suffered by the applicant. It is therefore in the interest of the parties who apparently are beneficiaries

of the estate to have the title No. West Pokot/Siyoi 'A'/275 preserved.

Pursuant to the above directions and as rightly conceded by the applicant in his further affidavit and so as to allay any fears by the respondent it is fit that this title be deposited in his court.

This will satisfy both parties and any outcome of the intended appeal shall not be rendered nugatory and no loss shall be suffered. Having stated so, there is no other form of security then to be satisfied by the applicant as the title is already with the Deputy Registrar of this Court.

In the premises the application is allowed. Let the original title deed for land parcel No. West Pokot/Siyoi 'A'/275 be deposited with the Deputy Registrar of this Court within the next 14 days from the date herein.

Costs in the cause.

Delivered this 14th day of February 2017.

H.K. CHEMITEI

JUDGE

In the presence of;

Kiarie for the Petitioner/Applicant

No appearance for the Respondent

Court Assistant - Kirong