

REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT

AT MOMBASA

ELC NO. 183 OF 2013 (OS)

KESI KAHINDI & 23 OTHERS APPLICANTS

VERSUS

PHILIP KIMEU & ANOTHERRESPONDENTS

RULING

(Application for stay pending appeal; no competent notice of appeal; futile to make an order for stay pending appeal when no competent appeal can be filed; application dismissed)

1. The application before me is that dated 17 March 2020 filed by the unsuccessful plaintiffs. It is an application for stay pending appeal and the same is opposed.
2. To put matters into context, through an Originating Summons filed on 20 August 2013, the applicants sought to be declared as owners of the Plot No. 190 Section I/Mainland North, through the doctrine of adverse possession. The suit was resisted and through my judgment delivered on 11 March 2020, I dismissed the suit. Part of the reasons that led me to dismiss the suit was a report that had been prepared by the Deputy Registrar in the year 2015, which demonstrated that all the developments on the land were recent, and did not back up the assertion of the applicants that they have been in occupation in excess of a period of 12 years. There was also evidence of continued invasion of the suit land by new persons with the land changing character with every passing day. Among the claimants was one who was only 5 years as at the year 2001, which would be the minimum period of commencement of possession (in order to support a claim for adverse possession that was filed in 2013 for 12 years of possession need to lapse), and it was clear to me that he could not possibly have had the capacity to seize possession of land at that tender age in order to support a suit by adverse possession. In my judgment, I gave liberty to the respondents to seek the eviction of the applicants from the suit land, since their claim for the land had failed. In this application, the applicants want a stay of execution of the judgment pending appeal.
3. The first thing that I need to be satisfied is that the applicants have exercised their right of appeal by filing a Notice of Appeal. I have seen a Notice of Appeal in the file which was lodged on 2 April 2020. It will be recalled that judgment was delivered on 11 March 2020, meaning that the Notice of Appeal needed to be filed, latest, by 25 March 2020, following the provisions of Rule 75 (2), of the Court of Appeal Rules, 2010, which stipulates that a Notice of Appeal needs to be filed within 14 days of the judgment.
4. I have no application before me for extension of time for filing the Notice of Appeal, and that being the case, the Notice of Appeal is incompetent and incapable of anchoring an appeal to the Court of Appeal. Since there cannot be filed an appeal to the Court of Appeal, as there is no competent Notice of Appeal, it is pointless issuing an order of stay pending appeal.
5. For that simple reason, this application must fail, and it is hereby dismissed with costs.
6. Orders accordingly.

DATED AND DELIVERED THIS 23RD DAY OF JUNE 2020

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT MOMBASA