



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT NAKURU

CIVIL APPEAL NUMBER 27 OF 2016

DAVID KAROBIA KIIRU.....APPELLANT

VERSUS

CHARLES NDERITU GITOI.....1<sup>ST</sup> RESPONDENT

FAMILY BANK LIMITED.....2<sup>ND</sup> RESPONDENT

RULING

1. The Applicant appellant in this appeal by his application dated 8<sup>th</sup> February 2016 seeks an order of injunction against the Respondents to restrain them from disposing off, selling, transferring or in any other way interfering with **Land Parcel No. Laikipia Lariak/567** pending hearing and determination of this appeal in respect of land **Parcel No. Laikipia/Lariak/567**, subject matter of the appeal. It is based on the provisions of **Order 42 Rule 6(6) of the Civil Procedure Rules** and **Sections 1A, 1B and 3A of the Act**. From the onset the above provisions of the law are irrelevant as far as the orders sought are concerned as they deal with stay of execution pending hearing and determination for the appeal.

2. A brief background to the application is that the appellant filed the lower court case, **Nakuru CMCC No. 1427 of 2015** seeking an injunction against the Respondents in respect of the land parcel stated above.

Upon service, the Respondent challenged the jurisdiction of the Chief Magistrate's court to hear and determine the suit. By a ruling dated 22<sup>nd</sup> February 2016 the trial court upheld the preliminary objection and made a finding that the court with the necessary territorial jurisdiction was the Nyahururu Chief Magistrates court where the subject land, subject of the suit is situated. It is this ruling that prompted the appellant to lodge the appeal hereof.

3. The ruling appealed from is not annexed to the application. This court does not have the benefit of referring and/or perusing the said ruling to satisfy itself of the contents of the same, its existence and certainty.

4. In my considered view, without the benefit of the perusal and consideration of the order appealed from, this court will be doing an injustice to the application by delving into the analysis and deliberations on the same.

5. The court must satisfy itself of the existence and certainty of the order appealed from before considering the merits of the application. It may be argued that failure to extract and annex a certified order or ruling to the application is a procedural technicality and thus failure to consider the application would cause injustice to the applicant.

6. Much as this court is aware that **Article 159 (2)(d)** of the **Constitution** enjoins the court to dispense justice without undue regard to procedural technicalities, it is my finding that without the benefit of ascertaining the existence, meaning and purport of the ruling appealed from, the court would be acting in darkness, which may cause injustice to the parties.

6. For those reasons, the application dated 8<sup>th</sup> March, 2016 is disallowed and dismissed with no orders as to costs.

**Dated, signed and delivered in open court this 2<sup>nd</sup> day of June 2016**

**JANET MULWA**

**JUDGE**