

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAIROBI

CIVIL APPEAL NUMBER 440 OF 2013

JOSEPH PATRICK WANGANGA. APPLICANT/APPELLANT

VERSUS

PATRICK N KIMETHU. RESPONDENT

RULING

The application before the court is the Notice of Motion dated 21st August, 2013 seeking a stay of execution pending the determination of appeal. It was filed by the Appellant.

The facts show that the subject matter of the dispute is a piece of land occupied by the appellant for many years including the present period. The appeal appears to have been timeously filed. So was this application.

The application is based on the grounds that if the stay of execution is not granted the Appellant is likely to suffer substantial loss in that the Respondent is likely to evict him from the piece of which he has lived on for many years and that the eviction will cause much suffering which cannot be easily compensated.

The record show that the Respondent admits that the applicant has been in continuous occupation and does not deny that eviction will cause substantial loss. What he states is that he has no intention of evicting the Applicant and therefore there is no need for the court to grant the stay sought. He also argues that the appeal has no chances of success because the certified copy of judgment was not annexed to it when it was filed.

I have considered the facts of this case. The appeal validly lies. This application was filed promptly and without undue delay. The applicant is and has been in occupation of the piece of land the subject of this suit for many years. The respondent does not foresee the applicant being evicted and does not intend to do so. It is not denied that the applicant will suffer substantial loss if, by any chance he is evicted. In these circumstances, the conditions for granting a stay of execution have been met and nothing persuades this court from granting the order sought. Accordingly, the order of stay sought is hereby granted until the appeal is finally determined. Orders accordingly.

Dated and delivered at Nairobi this 12th day of February, 2014.

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D A ONYANCHA

JUDGE