

IN THE HIGH COURT OF KENYA AT BUNGOMA

MISCELLANEOUS CIVIL APPL. NO. 29 OF 2014

PIUS SIKWEMBE MASAI.....APPLICANT

VERSUS

MARTIN NABANGI MULONGO..... RESPONDENT

RULING

1. The applicant Pius Nabangi Sikwembe Masai moved the court vide his application dated 12.3.2014 seeking for orders;

1. That this honourable court do allow the respondent be compelled to sign transfer forms for subdivision for one acre (0.4 Ha) of land curved from **E. BUKUSU/N. KANDUYI/8482** to the applicant's names and that in default the court to delegate its powers to the Deputy Registrar to sign all the necessary documents on behalf of the respondent.

2. The further ground to be adduced at the hearing of this application.

3. Costs of this application to be provided for.

2. The application is opposed. The respondent filed an affidavit in reply and at paragraph 2 thereof deposed that he has filed an appeal in the high court to oppose the motion. He annexed the notice of motion as filed to this replying affidavit. He deposed that this application is meant to transfer his land and he prayed the motion be stayed pending hearing of his appeal.

3. I have perused through the pleadings and considered the oral submissions made. Ms. Nanzushi advocate for the applicant submitted that there is no appeal that is pending in respect of the judgment of this court delivered in 2012. Mr. Areba advocate on his part for the respondent submitted that there does exist an application for stay and leave to appeal out of time. That their application will be overtaken by events if this application is allowed. He urged the court to suspend this motion until they would have prosecuted their application.

4. The application filed by the respondent and annexed to his replying affidavit is dated 15th May 2014 and filed in court on 18.5.14. This notice of motion is dated 12th March 2014 and filed in court on 13.3.14. There is a procedure to be followed if a party wishes to stay proceedings. The filing of an application does not of itself act as a stay of proceedings. The respondent in the annexed application sought stay of execution of the decree but not stay of proceedings. As at this date of hearing the present application, there is no appeal filed nor an order of stay of proceedings in force. There is nothing put forward by the respondent to this court that can make it not decline to grant the orders prayed for. The prayer seeking this court's order to compel the respondent to sign transfer forms for subdivision for one acre (0.4 ha) to be curved from L.R. E. Bukusu/N. Kanduyi/8482 to the applicants name be and is hereby granted. In default of the respondent executing the documents, the Deputy Registrar shall sign all those necessary documents on behalf of the respondent transferring the one acre portion being curved out of L.R no. E.Bukusu/N.Kanduyi/8482 in favour of the applicant. Each party to bear their costs.

Dated, Signed and Delivered in Bungoma this 8th day of July 2014.

A. OMOLLO

JUDGE