



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 78 OF 2015

SCHOOL MANAGEMENT COMMITTEE,

KOKWONGOI PRIMARY SCHOOL.....PLAINTIFF

VERSUS

KIPKOSGEI CHERUIYOT.....DEFENDANT

RULING

[MOTION DATED 4TH JUNE, 2020]

1. The Defendant moved the Court through the Motion dated 4th June, 2020, seeking for temporary stay of execution of the Court's order in its judgment of 6th May, 2020 pending hearing and determination of the intended appeal and costs. The application is based on the six grounds on its face and is supported by the affidavit sworn by the Defendant on the 4th June, 2020. It is the Defendant's case that he is aggrieved by the decision of the Court that he excises a portion of the suit land and transfer it to the Plaintiff. That he has since filed a Notice of Appeal dated 19th May, 2020. That unless stay of execution is allowed, he stands to suffer irreparable damages as he risks being evicted from the land. That he is willing to abide by any terms the Court may impose.

2. The application is opposed by the Plaintiff through the grounds of opposition dated 16th June, 2020 summarized as follows;

(a) That the application is defective, incompetent, untenable, devoid of merit and public interests militates against granting it.

(b) That the Defendant has not satisfied the parameter of getting stay pending appeal.

(c) That the record shows that the Plaintiff was actually in active possession and use of the three acres of the suit land from 1997 to 2015, when the Court restrained parties from utilizing it. That accordingly, the Defendant has not demonstrated that he was in possession and if evicted, would suffer substantial loss.

3. The learned counsel for the Defendant and Plaintiff filed their written submissions dated the 21st July, 2020 and 28th July, 2020 respectively.

4. The following are the issues for the court's determinations;

(a) Whether the Defendant has established the parameters required under Order 42 Rule 6 of Civil Procedure Rules for stay order pending appeal to issue.

(b) Who pays the costs?

5. The Court has carefully considered the grounds on the Motion, the affidavit evidence by the Defendant, the grounds of opposition, the learned Counsel's submissions, the superior Court's decisions cited therein and come to the following findings;

(a) That from the record and especially pages 13 to 15 of the judgment delivered on 6th May 2020, it is apparent that the Plaintiff was allowed by the Defendant to take possession of the suit land in 1997 and continued in possession until the Court order of 26th March, 2015. That now that the Court has rendered its judgment in favour of the Plaintiff, and noting that the Plaintiff is a public institution that is not likely to dispose or alienate the suit property any time soon or before the appeal is heard and determined, the Court do not find any basis of restraining the Plaintiff from continuing to use the suit land in the same way it was using it before the order of 26th March, 2015.

(b) That however, as the Defendant has preferred an appeal, it is only fair orders **(b)** and **(c)** of the judgment that deals with the excision and transfer of the three acres of the suit land to the Plaintiff be stayed, pending the hearing and determination of the appeal.

(c) That the costs of the application will abide the outcome of the appeal.

6. That flowing from the foregoing, the Court finds partial merit in the Motion dated 4th June, 2020 and is allowed in the following terms;

*(a) That there be a temporary stay of execution of orders **(b)** and **(c)** of the judgment dated 6th May, 2020 pending the hearing and determination of the appeal.*

(b) That the costs of the application abide the outcome of the appeal.

Orders accordingly.

Delivered virtually and dated at Eldoret this 21st day of October, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiff: Absent.

Defendant: Absent.

Counsel: Mr. Kuria for the Plaintiff.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.