

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. 14 OF 2020

SARAH CHEPKIRUI KERICH.....APPELLANT/APPLICANT

-VERSUS-

DAVID TAA KIPRONO.....RESPONDENT

RULING

By a Notice of Motion dated 18th March, 2020 the Appellant/Applicant sought for order of stay of execution pending the hearing and determination of the Applicant's appeal. The Application is based on the grounds that the trial court did not issue any temporary stay of execution and that the conduct of the mater and the subsequent judgement of the court had caused the Applicant to be admitted in hospital and being a single mother of 5 children she has no one to physically defend her and that the applicant may commence execution proceedings and thus render her Appeal nugatory and consequently suffer loss and damage. The Application was also supported by the affidavit of the appellatant.

The Application was opposed by the Respondent who had filed a replying affidavit contending that the Application does not meet the threshold for the grant of stay of execution in that the appellatant does not have an arguable case with overwhelming chances of success.

The Respondent further averred that the Applicant has not proved the allegation of substantial loss she will suffer since it is the respondent who has been in occupation of the suit premises.

I have considered the application before me and the submissions by the parties this being an application for stay of execution the grounds for the grant of the same is now well settled. A party must demonstrate that he has an arguable case of appeal with probability of success, that the party will suffer substantial loss and the appeal may be rendered nugatory if the stay is not granted.

In the instant application the appellatant is apprehensive that the respondent may commence execution proceeding of the judgement and hence the appeal may be rendered nugatory. The respondent contends that the appellatant had not made an application for stay in the lower court and the entire application does not meet the threshold for the grant of stay of execution and thus the application be dismissed with costs. From the proceedings of the lower court it is true that there was no application made for stay in the lower court however, that does not make the instant application fatal. As whether the appeal has overwhelming chances of success that is an issue that I will determine on merit and hence will not make a determination thereof and on whether the applicant will suffer substantial loss since the appeal relates to a parcel of land and the appellatant is bound to be evicted if no stay is granted that will in my view cause the appellatant substantive loss and thus I find that pending the hearing of the appeal there is need to preserve the suit land and consequently I will allow the notice of motion dated 18th March, 2020 as prayed and order stay of execution pending the hearing and determination of the appeal.

DATED, SIGNED and DELIVERED in open court at NAROK on this 10th day of November, 2020

Mohammed N. Kullow

Judge

10/11/2020

In the presence of: -

CA:Chuma

Mr Korir for the Appellant/Applicant

Respondent-present