



REPUBLIC OF KENYA

IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: GICHERU, SHAH & PALL JJ)

CIVIL APPEAL NO.NAI. 193 OF 1997 (83/97 UR)

BETWEEN

ALFAYO NJIRU JACKSON.....APPLICANT

AND

JANE BETHA WANDIA JACKSON.....RESPONDENT

(An application for stay of Execution pending the hearing and determination
of an intended appeal of the judgment of the High Court of Kenya

at Embu (Hon. Justice Etyang) dated 7th May, 1997

in

H.C.C.AP. NO. 50 OF

RULING OF THE COURT

This is an application for stay of execution of the appellate decree dated 7th May, 1997 passed by Etyang J. in Civil Appeal No.50 of 1996.

The applicant is the brother of the respondent. By a family arrangement, it was allegedly agreed that land parcel Ngandori/Kirigi/3059 measuring 6 acres or thereabouts shall be transferred by the respondent and her mother in favour of the applicant and in return the applicant shall transfer Ngandori/Kirigi/2174 measuring 4.5 acres or thereabouts in favour of the respondent. The respondent's case in the subordinate court was that although she and her mother had already transferred parcel 3059 in favour of the applicant and although the land control board had given its consent to the transfer, in exchange, of parcel 2174, the applicant had refused or failed to transfer the said parcel No.2174 in favour of the respondent.

The dispute in the subordinate court was referred to a panel of elders who made the award in favour of the respondent. The applicant appealed to the High Court against the judgment entered by the subordinate court in pursuance of the award and the appeal was dismissed with costs.

The intended appeal to this court can lie only on limited grounds mentioned in section 72(1) of the Civil Procedure Act. Broadly speaking, the 2nd appeal to this court can only be if the decision of the

superior court is contrary to law or to some usage or if the court failed to determine any point of law or if there is a substantial procedural defect which may have produced error or defect in the decision of the superior court upon the merits. We have gone through the applicant's proposed grounds of appeal and we are not certain at this stage that the applicant has an arguable appeal and we do not feel satisfied that the respondent should be kept away from the fruits of the judgment in her favour. We therefore dismiss the application with costs. However we order that if an appeal is duly filed and if during the pendency of that appeal the suit land is registered in the respondent's name, she shall not transfer or alienate or part with possession thereof or any part thereof until the hearing and final determination of the appeal. This order shall be in force from the date of this order to the date of the final determination of the appeal. Dated at Nairobi, Kenya, this 10th day of October, 1997.

J.E. GICHERU

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JUDGE OF APPEAL

A.B. SHAH

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JUDGE OF APPEAL

G.S. PALL

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

DEPUTY REGISTRAR