



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 94 OF 2016

JACKSON KIPROTICH KIBOR.....PLAINTIFF

VERSUS

KIPRUTO ARAP LELEI.....1ST DEFENDANT

SAMUEL KIPRONO SAMOEI.....2ND DEFENDANT

TANGUAR ARAP SUGE.....3RD DEFENDANT

SEREI ARAP LEL NENGIT.....4TH DEFENDANT

CHELULE KEINO.....5TH DEFENDANT

WESLEY KIMELI SAMBAI.....6TH DEFENDANT

WILSON KIPKERING KOGO.....7TH DEFENDANT

KIPROTICH ARAP KIBIWOTT.....8TH DEFENDANT

GEDION KIPRUTO CHEMIRON.....9TH DEFENDANT

THE ATTORNEY GENERAL.....10TH DEFENDANT

ELKANA KIPLETING KIBOR.....11TH DEFENDANT

EVANS KIPKOSGEI KIBOR.....12TH DEFENDANT

EZEKIEL KIPNG'ETICH KIBOR.....13TH DEFENDANT

ERICK KIPCHUMBA KIBOR.....14TH DEFENDANT

RAYMOND KIBITOK KIBOR.....15TH DEFENDANT

KESENCHÉ "B".....16TH DEFENDANT

KESENCHÉ "A".....17TH DEFENDANT

EDWIN KIPKOECH KIBOR.....18TH DEFENDANT

THE CHIEF LAND REGISTRAR.....19TH DEFENDANT

THE COUNTY LAND REGISTRAR,

RULING

[NOTICE OF MOTION UNDER CERTIFICATE OF URGENCY DATED 3RD JUNE 2020, 4TH JUNE, 2020 AND 13TH JUNE, 2020]

1. The 2nd to 5th, 8th and 9th Defendants filed the Notice of Motion dated 4th June, 2020 seeking for a temporary order of stay of execution of the judgment delivered on 6th May, 2020 pending the hearing and determination of the intended appeal and costs. The Motion is based on the six (6) grounds on its face and supported by the affidavit of **Samwel Kiprono Samoei**, the 2nd Defendant, sworn on the 4th June, 2020. That it is their case that they have filed the Notice of Appeal dated 19th May, 2020 to the judgment of 6th May, 2020. That they are very senior citizens and stand to suffer irreparable damages if they are evicted from the suit land which hosts their home. That they are willing to abide by any terms the Court may impose in granting their application that has been filed expeditiously for the interest of justice.

2. The 11th Defendant also filed the Notice of Motion dated the 21st May, 2020 under Certificate of Urgency dated 13th May, 2020 on the 9th June, 2020, seeking for stay of execution of the orders and or decree that the Land Registrar, Uasin Gishu County, do nullify and cancel the consolidation, subdivision and issuance of title numbers **Soy/Kapsang Block 10(Samito) 1-20**, pending the inter-parte hearing and determination of the appeal and costs. The application is based on the seven (7) grounds on its face and supported by the affidavit sworn by **Elkanah Kipleting Kibor** on the 21st May, 2020. That it is the 11th Defendant's case that he filed the Notice of Appeal dated the 15th May, 2020 after the judgment was delivered on 5th May, 2020. That if the Court's judgment is executed, he will suffer irreparably and that the stay order should be granted pending the appeal's hearing and determinations.

3. The 13th and 18th Defendants/Applicants filed the Notice of Motion dated 3rd June, 2020 seeking for stay of execution of the judgment delivered on 6th May, 2020 and temporary injunction restraining the Plaintiff by himself, agents or servants from selling, disposing, transferring, charging and or in any other manner interfering with **L. R. No. 8300 and 8301**, pending the hearing and determination of the intended appeal and costs. The application is supported by the affidavits sworn by **Ezekiel Kipngetch Kibor**, 13th Defendant and **Michele Chebet Saina**, widow of the 18th Defendant, **Edwin Kipkoech Kibor**. That it is their case that they have filed the notice of appeal on the judgment delivered on 6th May, 2020. That the Plaintiff is likely to dispose off the suit land hence subjecting them to substantial loss unless the application is allowed.

4. The Plaintiff filed his grounds of opposition dated the 20th July, 2020 in answer to each of the three applications and replying affidavits of the Plaintiff sworn on same date. The grounds and affidavit evidence are summarized as follows;

- (a) That the applications are incompetent, frivolous, lacks merit and should be struck out for failure to meet the threshold for granting of the orders sought.
- (b) That granting the applications will prejudice the Plaintiff's fundamental right to property and the Plaintiff should be allowed to enjoy the fruits of the judgment.
- (c) That the Defendants have not come to Court in clean hands or good faith.
- (d) That the applications should be dismissed with costs.
- (e) That Michele Chebet Saina has no locus standi as she has not been substituted for 18th Defendant.

5. The learned counsel for the 11th to 14th and 16th Defendants filed their written submissions dated the 18th September, 2020 on the 22nd September, 2020 while that of the 13th and 18th Defendants filed theirs dated the 21st October, 2020. The learned Counsel for the Plaintiff filed one dated the 18th November, 2020 and two dated the 19th November, 2020.

6. The following are the issues for the Court's determinations;

- (a) Whether the Defendants/Applicant in each of the three applications have satisfied the threshold set under Order 42 Rule 6 of the Civil Procedure Rules for the orders sought to be granted.***
- (b) Who pays the costs of each of the applications?***

7. The court has carefully considered the legal provisions in each of the three applications, the grounds thereon, the affidavits evidence, the Learned Counsel's submissions and come to the following conclusions;

- (a) That the Motion dated and filed on 4th June, 2020 has cited "**Order 22 Rule 2, Order 51 of the Civil Procedure Rules and Section 3(a) of the Civil Procedure Act**". That **Order 22 Rule 2 of the Civil Procedure Rules** provides for payment out court to decree-holder and do not appear to have any relevance to the prayer for stay of execution pending hearing and determination of the appeal. That **Civil Procedure Act Chapter 21 of Laws of Kenya** do not have any Section numbered as **3a**. That the Section in that Act that may appear similar is **Section 3A** that restates or saves the inherent powers of the court to do justice or to prevent abuse of the process of the court. That **Order 51 of the Civil Procedure Rules** provides for applications generally. That the guiding and relevant provisions for applications for stay pending appeal from decisions of this court to the Court of Appeal is **Order 42 Rule 6**

of the Civil Procedure Rules that sets the threshold for an applicant to satisfy to enable the Court exercise its discretion to their favour. That as the application is filed through Counsel, the Court expects the proper provisions of the law, under which the application is brought to be cited.

(b) That in respect of the application by 13th and 18th Defendant/Applicant dated 3rd June 2020, it is brought under **Order 42 Rule 6 of the Civil Procedure Rules**. That Michele Chebet Saina, reportedly the widow of the 18th Defendant, has not disputed the Plaintiff's challenge that she has not applied to be substituted as the personal representative for the 18th Defendant in accordance with the law and hence lacks locus standi. That the said Michelle Chebet Saina appear to believe that she has the locus standi as she has a confirmed grant. That however, the learned Counsel for the Plaintiff submits that she does not have the locus standi as she has not complied with **Order 24 of the Civil Procedure Rules** on substitution of the 18th deceased Defendant. That as the proceedings are yet to be typed, this Court is unable to confirm whether that issue of her capacity was raised before the trial court and or determined.

(c) The Motion dated the 21st May, 2020 under Certificate of Urgency dated 13th May, 2020 and filed on 9th June, 2020 cites **Section 1A, 1B, 3A and 79 G of the Civil Procedure Act** and **Order 42 Rule 6(1) and (2) (a) and Order 50 of the Civil Procedure Rules**. That **Order 50 of the Civil Procedure Rules** deals with provision on computation of time. That **Sections 1A, 1B and 79 G of the Civil Procedure Act** provides for objective of the Act, duty of the Court and time for filing appeals from the subordinate Courts.

(d) That **Order 42 Rule 6 of the Civil Procedure Rules** requires of an application seeking stay pending appeal order to satisfy the Court that substantial loss would result unless the order is allowed; that the application has been made without unreasonable delay and give security for the due performance of the decree or order as may be ordered by the court. That in all the three applications herein, there is no evidence tendered that goes to show the extent of the damage the respective defendants are likely to suffer if the applications are not granted. That in any case, the judgment delivered on the 6th May, 2020 clearly shows the prayer to have the sons of the Plaintiff, that is the 11th to 15th and 18th Defendants was declined, and there is no evidence tendered to suggest or show that the Plaintiff has set out to evict them, or is likely to evict them before the appeal is heard and determined.

(e) That even though the applications were filed without undue delay, and parties have expressed their readiness to comply with any terms the court may direct in granting the applications, the court finds in view of the finding in **(d)** above, the three applications have no merit and must fail.

(f) That the costs in the three applications to abide the outcome of the appeal.

7. That flowing from the foregoing, the Court finds no merit in the three notices of motion listed above and all are dismissed with costs to abide the outcome of the appeal. It is so ordered.

Delivered virtually and dated at Eldoret this 16th day of December, 2020.

S. M. KIBUNJA

JUDGE

In the presence of:

Plaintiff: Absent.

Defendants: Absent.

Counsel: Mr. Nyandieka for the Plaintiff/Respondent.

Mr. Kipnyekwei for 2nd to 5th, 8th and 9th Defendants/Applicants and

Mr. Maina for 11th to 14th and 16th Defendants/Applicants.

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.