



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MIGORI

ELC APPEAL CASE NO. 34 OF 2020

EVANCE OTIENO OLOO GOR.....1ST APPELLANT/APPLICANT

MICHEAL KOJO OTIENO.....2ND APPELLANT/APPLICANT

WALTER OKELO OPIYO.....3RD APPELLANT/APPLICANT

VERSUS

FUND MANAGER NGAAF HOMA-BAY COUNTY.....1ST RESPONDENT

HOMA-BAY COUNTY WOMEN REPRESENTATIVE...2ND RESPONDENT

M/S PACIFIC GENERAL WORKS LTD.....3RD RESPONDENT

(Being an appeal from the Ruling of Honourable A.T. Obutu (SPM) delivered on 26/8/2020 in the Chief Magistrate Court ELC Case No. 40 of 2020)

RULING

1. The instant ruling is in regard to a Notice of motion dated 15th September 2020 duly filed in court on 16th September 2020 and commenced under Section 1A, 1B,3A of Civil Procedure Act Cap 21, Order 40 Rule 7, Order 42 Rule 6 of Civil Procedure Rules 2010, (The motion herein). The three (3) appellants are seeking orders infra:-

a) Spent

b) Spent

c) **THAT** Honourable court be pleased to issue an order of stay pending appeal against the ruling of Honourable A.T. Obutu (SPM) delivered on 26/8/2020 in the Chief Magistrate's court ELC case No. 40 of 2020.

d) **THAT** cost of this application be provided for.

2. The motion is premised on the annexed affidavit of the 2nd appellant/applicant, Michael Kojo Otieno and grounds 1 to 7 set out on it's face. There is also a draft memorandum of appeal dated 15/9/2020, annexed thereto.

3. It is the duty of this court to ensure that the respondents were made aware of the existence of this motion and to have them served with all the necessary papers or documents. The respondents have the right to appear or to decline to appear as observed by the **Court of Appeal in Ogada =vs= Mollin (2009) KLR 620**.

4. So, on 17th September 2020, the court ordered and directed that the applicants serve the respondents with the motion. Indeed, by an affidavit of service sworn on 14th December 2020 and filed in court on 15th December 2020, respondents were duly served.

5. The respondents failed to respond to the motion.

6. It is trite law that this court has authority to issue orders for the preservation, in the interim, of a subject matter of appeal; see the decision of the Supreme Court of the Republic of Kenya in **Board of Governors Moi High School Kabarak and another =vs= Malcom Bell (2013) eKLR**.

7. Moreover, under **section 13 (7) (a) of the Environment and Land Court Act, 2015 (2012)**, this court has the mandate to issue preservation orders in a matter. Order of stay sought herein is not precluded thereby.

8. I have duly considered the motion in its entirety. It is hinged on a solid foundation, unchallenged and full of merits.

9. Accordingly, the notice of motion dated 15th September 2020 duly lodged in court on 16th September 2020 is hereby allowed on terms infra;-

- a) Prayer 2 in respect of stay of ruling as sought therein as this appeal is admitted accordingly.
- b) Costs be in the cause.
- c) The appellants/applicants shall file and served a complete record of appeal within the next forty-five (45) days from this date in view of **Article 159 (2) (b) of the Constitution of Kenya, 2010** in default, order of stay granted herein shall lapse forthwith.
- d) The Deputy Registrar of this court to call for the original record of the trial court urgently.
- e) Mention to confirm compliance and for directions on 17th March 2021.

It is so ordered.

DELIVERED, DATED and SIGNED at MIGORI this 15th day of December, 2020.

G.M.A. ONGONDO

JUDGE

In the presence of: -

1st, 2nd, and 3rd Appellants/Applicants

Non appearance for the respondents

Mr. Tom Maurice – Court Assistant