



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 160 OF 2014**

**PAS COMMUNICATION LTD.....PLAINTIFF**

**VERSUS**

**TERESIA WANGARE KINUTHIA.....DEFENDANT**

**RULING**

The Judgment debtor/applicant prays for an order that this honourable court be pleased to stay execution of the decree that has been issued in respect of the judgment entered on 23.11.2018 and any other order that may be issued pursuant thereto, pending appeal. The application is based on grounds that the applicant has an arguable appeal with a high probability of success and that if the said stay of execution is not granted, the applicant's appeal will be rendered nugatory and the applicant will suffer irreparable damage.

The applicant claims that unless the application is granted, the respondent may levy execution against the applicant and that the applicant is ready, willing and able to deposit such sum/security as this honourable court may order to be so deposited in as security for the intended appeal and that substantial loss will result to the applicant unless the orders sought are granted. According to the applicant, this application has been made without unreasonable delay and therefore the application ought to be granted in the interest of equity and justice.

The application is supported by the affidavit of the Judgment debtor/applicant who states that for the record, she did through her advocates on record file a letter requesting for the proceedings in this matter on 13.12.2018 and a Notice of Appeal on 1.1.2019. That to-date, the said proceedings have not been typed and or ready so they can prepare their appeal. That the intended appeal raises serious issues with high chances of success. That she has been in occupation of the suit parcel of land where she has been residing with her mother as she is not married. The Judgment debtor/applicant shall suffer no loss whatsoever as it has never been in possession of the suit parcel of land.

That she is aggrieved and dissatisfied with the said judgment and has instructed its Advocates on record, to appeal against the same. That if the Judgment debtor/applicant is evicted, the intended appeal will be rendered nugatory and the Judgment debtor/applicant will suffer irreparable loss and damage.

That in view of the foregoing, unless the orders are granted, the plaintiff threatens to levy execution to the detriment of the proposed appellant.

The respondent filed grounds of opposition stating that substantial loss to be suffered by the applicant has not been demonstrated and no security has been offered. There is inordinate delay in filing the application and no explanation has been offered.

The respondent is opined that the applicant has not demonstrated that the appeal will be rendered nugatory if stay is not granted. That the respondent shall be prejudiced.

Lastly, that the applicant lodged the Notice of Appeal on 1.1.2019 and yet judgment was delivered on 23.11.2018. No leave was sought and obtained.

I have considered the application, supporting affidavit, grounds of opposition, replying affidavit and do find that judgment was delivered on 23.11.2018. The Notice of Appeal dated 14.1.2019 was lodged on 15.1.2019. The Notice of Appeal was lodged **more than 14 days** out of time which delay I find to be inordinate and there is no explanation for the inordinate delay. There is no application for leave to file the same out of time. There is no validation of the notice of appeal.

The application for stay of execution pending appeal is made on 22.3.2019 a period of 120 days after the delivery of judgment. This amounts to inordinate delay that is not explained.

Moreover, the applicant has not demonstrated the substantial loss that is likely to be suffered. There is no valuation report of the loss that is likely to be suffered by the applicant.

I do find that the application is an afterthought as the court has already issued order that the applicant be evicted by the Decree holder with the help of Kenya Police.

The upshot of the above is that the application lacks merit and is dismissed with costs.

**Dated and delivered at Eldoret this 24<sup>th</sup> day of April, 2019.**

**A. OMBWAYO**

JUDGE