



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 262 OF 2017

ERICK KIPLANGAT CHERUYOIT.....PLAINTIFF/RESPONDENT

-VERSUS-

RICHARD MASOI AND 33 OTHERS.....DEFENDANTS/APPLICANTS

RULING

By an Application dated 24th January, 2019 and brought under orders 42 Rule (1), 51 (1) of the Civil Procedure Rules and sections 1 and 1B 3A of the Civil Procedure Act the applicants sought for orders that there be a stay of execution pending the determination of an intended Appeal. The Application was based on the grounds the Applicants are aggrieved by the judgement of the court delivered on 10th November, 2018 which ordered that the respondent do vacate the suit parcel within 90 days and that the respondent has already commenced execution proceedings and if allowed they will suffer prejudice.

The Application was supported by the Affidavit of Richard Kiprop Marusoi for and on behalf of 33 other Applicants/Defendants. The applicant contends that the Applicants together with their families' risk eviction from the suit parcel as execution proceedings commenced and in the event that the same takes place the Appeal will be rendered nugatory and they will suffer irreparable loss.

The Application was opposed by the Plaintiff/Respondent by way of a replying affidavit in which he averred that the application is frivolous, vexatious and an abuse of the process of the court. He contends that the orders sought have been overtaken by events and the process of execution has taken place and further the Applicants have filed the present application after more than three months.

The Respondents have further argued that in the event that the court grants the order sought the applicant be ordered to provide security for costs of kshs. 20,000,000/-.

The Application was disposed off by way of written submissions. The Applicants in their submissions submitted that the Application was filed without unreasonable delay and that they have a good and arguable appeal and they are willing to deposit the costs of the suit as security.

The respondents in their submissions have raised the issues on whether the instant application meets the grant of orders of stay of execution they submitted that the court must satisfy itself that substantial loss will be occasioned to the Applicants.

I have read the application before me and the submissions made by counsel and the issues for determination is whether the applicant has met the threshold for grant of order of stay of execution. The condition for the grant of the orders are whether the application was brought without undue delay, and if the orders are not granted whether the applicant will suffer loss.

From the pleadings the instant application was filed on 24th January, 2019 whereas the Judgement was delivered on the 1st November, 2018. It is my finding that taking into account when the judgement was delivered and when the application was filed a period of about 2 ½ months of which this was during the Christmas and New Year holidays which the court takes Judicial Notice off there was no inordinate delay in the filing of the application.

On whether the applicants will suffer substantial loss, I find that the appeal relates to land which is highly emotive even though the applicants have not demonstrated the value of the land.

From the findings I will allow the application for stay pending the hearing and determination of the appeal on condition that the applicant do deposit the amount of kshs. 2,500,000/- being security for costs of the suit held in Joint Account name of both Advocates on record within 14 days of this ruling.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this **25th** day of **June, 2019**

Mohammed Noor Kullow

Judge

25/6/19

In the presence of:

Erick Kiplangat Cheruiyot-present

Richard Kiprop Marusoi & others-present

Advocates-absent

CA:Chuma

Mohammed Noor Kullow

Judge

25/6/19