



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAKURU

CASE No. 4 OF 2015

FREDRICK ARAP MARITIM (Suing on behalf of

MARITIM ARAP BORETOR)..... PLAINTIFF

VERSUS

ELIZABETH CHEPCHIRCHIR.....1ST DEFENDANT

THE DISTRICT LAND REGISTRAR NAKURU....2ND DEFENDANT

THE ATTORNEY GENERAL..... 3RD DEFENDANT

RULING

1. By Notice of Motion dated 17th May 2019, the plaintiff seeks an order that proceedings in Nakuru CMCC No. 1183 of 2017 be stayed pending hearing and determination of this suit or an intended appeal to the Court of Appeal. The application is supported by an affidavit sworn by the applicant. Though served, the respondents neither responded to the application nor attended court at its hearing.

2. The applicant states that his application for injunction having been dismissed pursuant to ruling delivered by Munyao J on 24th September 2015, he filed Notice of Appeal on 5th October 2015. He adds that on 17th August 2018, Ekegoro Management Company Limited and Peter Kinyanjui Kibe filed Nakuru CMCC No. 1183 of 2017 against him and seven others and that the dispute in this case and the subordinate court case relates to parcel of land known as Njoro/Ngata/Block 2/1589. That the pendency of this suit was brought to the attention of the trial magistrate in the subordinate court but the said court refused to stay the subordinate court case.

3. I have considered the application and the affidavit in support. The application essentially seeks stay of proceedings of the subordinate court case. The stay is proposed to last pending hearing and determination of an appeal against a decision that was made by this court way back on 24th September 2015 and in respect of which Notice of Appeal was filed on 5th October 2015. A rather confusing state of affairs. An explanation is offered that proceedings had delayed but I do not accept that explanation. I am aware that proceedings in this court are typed on a daily basis as soon as files leave court. Perhaps counsel for the applicant has just not been diligent in following up.

4. Two reasons have proffered for seeking to stay the subordinate court case: firstly that the dispute in this case and the subordinate court case relates to parcel of land known as Njoro/Ngata/Block 2/1589 and; secondly, that pendency of this suit was brought to the attention of the trial magistrate in the subordinate court but the said court refused to stay the subordinate court case. Let me begin with the second reason. No copy of any ruling, order or proceedings of the subordinate court is annexed. There may very well be good reasons why such a request was declined. It may also be that no such application is found on the record. If indeed such an application was made and the court declined to grant the orders, the ordinary course would be that the applicant files and appeal which would then afford all parties in the subordinate court case a chance to be heard. As it is, the present application is filed in this case where only a small section of the litigants in the subordinate court case are involved. If I were to grant the orders sought it would likely cause an injustice to parties by among others depriving them an opportunity to be heard.

5. As regards the argument that the dispute in this case and the subordinate court case relates to parcel of land known as Njoro/Ngata/Block 2/1589, I will not make any comments in that regard since that may be an issue that would fall for determination by the subordinate court if and when an application for stay of the subordinate court case is brought before it.

6. All in all, I am not persuaded that a case has been made for granting the orders sought. Notice of Motion dated 17th May 2019 is dismissed with no order as to costs.

Dated, signed and delivered in open court at Nakuru this 25th day of June 2019.

D. O. OHUNGO

JUDGE

In the presence of:

No appearance for the plaintiff/applicant

No appearance for the 1st defendant/respondent

No appearance for the 2nd and 3rd defendants/respondents

Court Assistants: Beatrice & Lotkomoi