



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

E & L CASE NO. 351 OF 2017

DANIEL KIMUTAI RUGUT.....1ST PLAINTIFF

STEPHEN KIPKORIR RUGUT.....2ND PLAINTIFF

VERSUS

JOYCE JEPLETING REINHARD.....DEFENDANT

RULING

This ruling is in respect of an application dated 22nd February, 2019 by the Defendant/Applicant seeking for orders of stay of execution.

It is the applicant's submission that they have an arguable appeal and that the respondents might go ahead and execute the orders against them and that will render the appeal nugatory.

The threshold for grant of stay of execution is settled as per Order 42 Rule 6 (2) of the Civil Procedure Rules which provides that,

“(2) No order for stay of execution shall be made under subrule (1) unless—

- a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

For an application for stay of execution to be granted then the applicant must demonstrate the above.

See the case of Joseph Gachee t/a Joska Metal Works vs Simon Ndeti Mwema.

In the above case it was stated by Odunga J. that it is not sufficient merely to state that the decretal amount is a lot of money and the applicant would suffer if the money is paid. In an application of this nature, the applicant must show the damages it will suffer if the order of stay is not granted. Since by granting stay would mean that status quo should remain as it were before the judgment and that would be denying a successful litigant the fruits of the judgment which should not be done if the applicant has not given to court sufficient cause to enable it exercise its discretion in granting the order’.

The applicant urged the court to allow the application as prayed. The application was opposed on the grounds that the applicants have not shown the loss that they would suffer if the orders are not granted as the respondent is the one in occupation of the suit land.

ANALYSIS AND DETERMINATION

It is trite law that in an application for stay of execution the applicant must comply with Order 46 Rule 6(2) of the Civil Procedure Rules which has been cited above.

In the current application the Applicant has not established that substantial loss may occur to them if the order of stay is not granted. They just stated that the respondent might cut down trees which they had planted.

This is not reason enough for the court to exercise its discretion to grant the orders sought. The court can restrain the Respondent from cutting down the trees and maintaining the status quo which is that the Respondent is in occupation of the suit land.

The Applicants had sued for the eviction of the respondent from the suit land but their case was dismissed and the respondent's counterclaim allowed which was to the effect that the respondent continues staying on the land and utilizing the same. This means that the applicants will not suffer any loss if the respondent continues in occupation of the suit land pending the hearing and determination of the appeal.

On the issue as to whether the application was filed in timely manner, I find that the Applicant has complied with this requirement as it was filed immediately after the judgment was delivered.

On the issue of security of due performance of the decree as may ultimately be binding on the Applicant, I order that the Applicant deposits Kshs.200,000/= with the Advocates for the Respondent within 30 days failure of which the stay lapses.

I therefore make the following orders that there be stay of execution of the judgment with the following terms.

1. That the Respondent continues to stay on the suit land and utilize the same pending the hearing and determination of the Intended Appeal.
2. That the Respondent refrains from cutting down the trees on the suit land.
3. That the Applicants do deposit Kshs.200,000/= with the Respondent's Advocate within 30 days failure for which the stay lapses.

DATED and DELIVERED at ELDORET this 13TH DAY OF JUNE, 2019.

M. A. ODENY

JUDGE

RULING READ IN OPEN COURT in the presence of Mr.Wanyonyi holding brief for Mrs.Lagat for Applicant and Mr.Wafula for Respondent

Mr.Emmanuel – court Assistant