



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MERU

ELC APPEAL NO. 20 OF 2019

JULIUS MBAE MUREMERA.....APPELLANT

VERSUS

ZIPPORAH WANJA KINYUA.....RESPONDENT

RULING

1. The Notice of motion before me was filed on 18/1/2019 (erroneously dated 16.1.2018 instead of 16.1.2019) which is brought under Order 42 Rule 6 of the Civil Procedure Rules. The applicant is seeking an order for stay of execution of the decree issued in Nkubu PMCC No. 50 of 2009 pending the hearing and determination of this appeal or until further orders are given by this court.

2. The application is premised on the grounds stated on the face of the application and in the supporting affidavit of Julius Mbae Muremera, the applicant. He avers that his family faces the danger of being evicted and that respondent will not be prejudiced as she is not in occupation of the suit land. Applicant further avers that he has duly filed the Appeal.

3. The respondent avers that she was the successful litigant in the lower court matter, that no decree has been extracted and that she uses part of the land parcel no LR.ABOGETA/U-KIUNGONE/407. She prays for the dismissal of the application as the appeal has no chances of success.

4. On 14.2.2019, the court gave directions for the application to be canvassed by way of written submissions considering that both parties were duly represented by advocates. I have only seen the submissions of the applicant.

5. The application is brought under **Order 42 Rule 6 of the Civil Procedure Rules** which states;

“(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.”

6. A Court of law has discretion to issue an Order for stay of execution but the said discretion must be exercised judiciously. In **Canvass Manufacturers Ltd Vs Stephen Reuben Karunditu, Civil Application No.158 of 1994, (1994) LLR 4853.** the Court held that:-

“In Conditions for grant of stay of execution pending appeal, arguable appeal and whether the

appeal would be rendered nugatory, the discretion must be judiciously exercised”.

7. Further in the case of **Stephen Wanjohi...Vs...Central Glass Industries Ltd, Nairobi HCC No.6726 of 1991**, the Court held that:-

“For the court to order a stay of execution there must be:-

i. Sufficient cause

ii. Substantial loss

iii. No unreasonable delay

iv. Security and the grant of stay is discretionary”.

8. The applicants in their submissions have argued that they have proved that the appellant would suffer substantial loss as he would stand to lose the land and the cost of reversing any entries made in implementing the judgement if this appeal succeeds, and that maintaining the status quo herein would be fair and just. I am in agreement with this line of submission. Finally, I find that the application was filed without any unreasonable delay.

9. In conclusion, I do find that the application is merited. I allow the same in the following terms;

1) An order of stay of execution of the Judgment and Decree in Nkubu P.M.C.C NO.50 of 2009 is hereby issued pending the hearing and determination of the appeal.

2) Status quo is to be maintained, whereby each party is to continue utilizing the portion of the suit land which they have been in control of.

3) The costs of this application shall abide the outcome of the appeal.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 17TH DAY OF JULY, 2019 IN THE PRESENCE OF:-

C/A: Kananu

Kimathi E holding brief for appellant/applicant

Mwanzia holding brief for Kiautha A. for respondent

Respondent

HON. LUCY. N. MBUGUA

ELC JUDGE