



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 341 OF 2016

NAWAZ ABDUL MANJI.....1ST APPELLANT
PROFESSOR HARUN MENGICH.....2ND APPELLANT
TEK EGO BORE.....3RD APPELLANT
JOSEPH KIPLAGAT LESSIEW.....4TH APPELLANT
PAUL BRENNAN.....5TH APPELLANT

VERSUS

VANDEEP SAGOO.....1ST RESPONDENT
ANDREW CHELEGOI.....2ND RESPONDENT
HELLEN YEGO.....3RD RESPONDENT
JAMES WAWERU.....4TH RESPONDENT
DR. JAMES KIBOSIA.....5TH RESPONDENT
BRIAN CUTHBERT.....6TH RESPONDENT
PATRICK KIPROP.....7TH RESPONDENT
ISCAH MAIZ.....8TH RESPONDENT
SEATTLE LOGISTICS LIMITED.....9TH RESPONDENT

RULING

APPLICANTS' CASE

The applicants filed the application on 29th June, 2019 seeking stay of execution for costs ordered by the court in a ruling delivered on 30th May 2019. The applicants deponed in their supporting affidavit that they are likely to suffer irreparable loss in the event that the appellant executes the court orders against them. They sought a review on 19th December 2018 on the basis that they were not personally liable as they were trustees of Eldoret club. The court declined to review its ruling and they filed a notice of appeal.

They deponed in their supporting affidavit that the execution will render their appeal nugatory and proposed that they were willing to furnish security for due performance in the decree on costs should they lose the appeal.

RESPONDENT'S CASE

The respondents filed grounds of opposition. The 2nd respondents opposed the application on the grounds that the application was a way to delay the matter. There was no resolution by the club members to authorize the filing and prosecution of the application and the appointment

of the firm of Manani Lilian and Mwetich advocates and as such there is no valid resolution authorizing the institution of these proceedings. Further, that the application offends the provisions of Rule 7.7 of the Eldoret Club rules and by laws requiring all documents signed on behalf of the club to be sufficiently signed by 2 members countersigned by the secretary of the club.

The affidavit sworn by Nawaz Abdul Manji in these proceedings is fatally defective and ought to be struck out. The entire proceedings are therefore null and void and the application should be dismissed as it is filed without procedural authorization and also without the authority of some of the plaintiffs.

The 1st-8th respondents filed grounds of opposition on 4th July 2019 based on the grounds that the application offends the mandatory provisions of the law. Further, that the applicant has not met the minimum requirements for the grant of the orders sought and that it is not in the interest of justice that the orders sought be granted.

ISSUES FOR DETERMINATION

a. Whether the applicants have satisfied the requirements for orders of stay

WHETHER THE APPLICANTS HAVE SATISFIED THE REQUIREMENTS FOR ORDERS OF STAY

Order 42 Rule 6(2) of the Civil Procedure Rules provides that;

No order for stay of execution shall be made under sub rule (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.

Substantial Loss

The Applicants have not proven that they will suffer substantial loss if execution is levied against them.

In the case of *Machira t/a Machira & Co. Advocates vs. East African Standard (No 2) (2002) KLR*, the court held;

In this kind of applications for stay, it is not enough for the applicant to merely state that substantial loss will result. He must prove specific details and particulars... where no pecuniary or tangible loss is shown to the satisfaction of the court, the court will not grant a stay...

It is this courts position in law that substantial loss should not only be alleged but must be proved by the applicants, furthermore, whether the decree holder is capable of paying back the money should be alleged and proved by the applicant. In this matter, the applicant has not demonstrated that the respondents are not people of means and therefore will be unable to pay the decretal sum if the applicant succeeds on appeal.

Unreasonable Delay

The ruling was delivered on 30th May 2019 and the application filed on 25th June 2019. I do find that the application was filed timeously in regard to the facts of the case.

Security

In *Tassam Logistics Ltd v David Macharia & another [2018] eKLR* the court held;

In a bid to balance the two competing interests, the courts usually make an order for suitable security for the due performance of the decree as the parties wait for the outcome of the appeal. This position has been ascertained in *Tabro Transporters Ltd –vs- Absalom Dova Lumbasi [2012] eKLR* where the requirement to furnish security was considered as the just thing to do when balancing the two competing interests.

The Applicants have deponed that they are willing to furnish security pending the appeal.

The requirement that has not been satisfied is that of substantial loss. There is no tangible loss that has been proven likely to occur.

It is also notable that the applicants may be using this as a way to delay the respondents from enjoying the fruits of their judgment. This is especially in light of the previous actions of the applicants including the application for review.

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

Dated and delivered at Eldoret this 12th day of July, 2019.

A. OMBWAYO

JUDGE