



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERICHO

ENVIRONMENT AND LAND SUIT NO: 22 OF 2015 (O.S)

IN THE MATTER OF LAND PARCEL KERICHO/KAPTEBENGWET/450

AND

IN THE MATTER OF SECTION 36 OF THE LIMITATION OF ACTIONS ACT (CAP 22 LAWS OF KENYA)

BETWEEN

GILBERT KIMUTAI KOECH.....PLAINTIFF/RESPONDENT

VERSUS

WILSON KIPNGENO KOECH.....DEFENDANT/APPLICANT

RULING

Introduction

1. What is before me for determination is the Plaintiff's application dated 16th April 2019 seeking a stay of execution of the court's ruling dated 2nd day of April 2019 together with all other proceedings in the cause herein pending the hearing and determination of KERICHO ELC CASE NO. 15 of 2019.
2. The application is premised on the affidavit of GILBERT KIMUTAI KOECH, the applicant herein in which he depones that if execution is carried out, the applicant and his siblings would suffer irreparable loss since they have nowhere else to move to. He further depones that his siblings were not party to the proceedings herein and they have filed a case of fraud against the Respondent in KERICHO ELC CASE NO. 15 of 2019.
3. The application is opposed by the Respondent through his Grounds of opposition dated 6th May 2019 where he cites the following grounds:
 - i. *The application is bad in law and is a waste of the court's time;*
 - ii. *This Honourable court lacks jurisdiction to grant the prayers sought;*
 - iii. *The cause of action in the new suit is totally different and the Applicant herein is not a party in KERICHO ELC CASE NO. 15 of 2019. RONALD KIBET KOECH & 3 OTHERS V WILSON KIPNGENO KOECH.*
 - iv. *The application is an abuse of the court process.*
4. The application was canvassed by way of written submissions and both parties filed their submissions which I have considered.

Issues for determination

- i. Whether the application has been overtaken by events
- ii. Whether the Applicant has met the conditions for stay of execution
- iii. Whether the application is merited

Analysis and Determination

5. Counsel for the Respondent submitted that the application has been overtaken by events as ELC CASE NO. 15 of 2019 upon which the Applicant has based this application was withdrawn when the said matter came up for mention for purposes of taking directions on the Preliminary Objection filed therein. It is not in dispute that KERICHO ELC CASE NO. 15 of 2019 RONALD KIBET KOECH & 3 OTHERS V WILSON KIPNGENO KOECH was withdrawn on the 30th may 2019. This application therefore has no legs to stand on as it was predicated on the ground that the applicant’s siblings had instituted proceeding claiming that the Respondent obtained his title by means of fraud. In the absence of the said suit and in the absence of an appeal against the judgment herein delivered on 20th September 2018, this application has no basis and it is destined to fail.

6. Be that as it may, I will proceed to examine the other issues to establish whether the application would have succeeded. The applicant is seeking a stay of execution of this Honourable Court’s ruling delivered on 2nd April 2019. The application is brought pursuant to section 3, 3A and order 22 Rule 22 of the Civil Procedure Rules and not Order 42 of the Civil Procedure Rules. It is important to point this out because the applicant had already been granted a stay of execution pending appeal under order 42 of the Civil Procedure Rules but he failed to meet the conditions for stay with the result that the orders lapsed.

7. Order 22 rule 22(1) provides as follows:

“The court to which a decree has been sent for execution shall, upon sufficient cause being shown , stay the execution of such a decree for a reasonable time to enable the judgment-debtor to apply to the court by which the decree was passed, or to any court having appellate jurisdiction in respect of the decree or the execution thereof, for an order of stay of execution or for any other order, relating to the decree or execution which might have been made by the court of first instance, or appellate court if execution has been issued thereby, or if application for execution has been made thereto”

8. From a plain reading of the above provision, it is clear that this kind of application is only made upon sufficient cause being shown, and for a reasonable time to enable the judgment-debtor apply to the court which passed the decree or an appellate court for any other order relating to the decree.

9. The application was initially made on the ground that the applicants had filed KERICHO ELC CASE NO. 15 of 2019 challenging the applicant’s title to the suit property. However, since the said suit was withdrawn, the application is now being made in a vacuum. The reasons advanced by the applicant would have made sense if he was pursuing an appeal but he appears to have abandoned that idea. The applicant has not provided sufficient cause why the respondent should be denied from enjoying the fruits of his judgment. In the case of **Anita Chelagat O’donovan & 2 Others v Fredrick Kwame Kumah & 2 Others [2015] eKLR** the court citing the **Kalya Soi Farmers’ Cooperative Society v Paul Kirui & Another [2013]eKLR** stated as follows:

“As is said, Equity like nature will do nothing in vain. On the basis of this maxim, courts have held again and again that it cannot stultify itself by making orders which cannot be enforced or grant an injunction which will be ineffective for practical reasons. If it will be impossible to comply with the injunction sought, the court will decline to grant it”.

10. In the instant case granting a stay of execution where there is a valid judgment in the absence of an appeal would be contrary to the dictates of justice.

11. The upshot is that the application lacks merit and is hereby dismissed.

12. I make no order as to costs.

Dated signed and delivered at Kericho this 12th day July, 2019.

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J. M ONYANGO

JUDGE