



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC APPEAL NO. 3 OF 2018

(FORMERLY CIVIL APPEAL NO. 170 OF 2014)

RAHAB WANJIRU KIARIE.....APPELLANT

VERSUS

EMBAKASI RANCHING COMPANY LIMITED.....1ST RESPONDENT

DUNCAN KINYANJUI NGIGE.....2ND RESPONDENT

(Being an appeal from the ruling of Hon. S. Atambo (Ms.), Principal Magistrate delivered on 04/04/2014 in the Chief Magistrate's Court at the Milimani Commercial Courts in CMCC No.10278 of 2006)

RULING

The Appellant seeks orders that the ruling delivered on 04/04/2014 be set aside and the application dated 22/10/2013 be allowed in the appeal. In the alternative, the Appellant prays that the appeal be allowed and that the court makes its own finding as it may deem fit. The Appellant then filed the application dated 19/01/2018 seeking to stay the processing and issuance of title deeds in regard to parcel number L. 571-C812 Block 136/2960 (Ruai) and parcel number P. 3695-C813 Block 136/2959 (Ruai) pending the hearing and determination of the appeal. She also sought the costs of the application.

The application was made on the grounds that the Appellant has an arguable appeal and has high chances of success which is yet to be heard and determined. She also raised the ground that the 1st Respondent is in the process of obtaining a title deed for the 2nd Respondent, which action will make her suffer substantial loss. She also relied on ground that the Respondents shall not be prejudiced if the orders sought are granted.

The application was supported by the Appellant's affidavit sworn on 19/01/2018 in which she deponed that she purchased shares of Embakasi Ranching Company Limited from John Ngugi Waiharu and Josephine Rwamba Gaita in 1990 for a consideration which she claimed she fully paid up, and that the 1st Respondent duly registered the transfer of the suit properties in her favour. She claims that the 1st Respondent later authorised a stranger to enter her property, demolish structures and live in it while she was sick and admitted in hospital, suffering from colon cancer. She filed **Milimani CMCC No. 10278/2006, Rahab Wanjiru Kiarie v Embakasi Ranching Company Limited**, to pursue her claim to the suit property but the matter was dismissed for want of prosecution on 12/01/2010 when her advocates failed to attend court for the hearing while she was admitted in hospital. She deponed that when she left the hospital, she made inquiries about the matter at the registry and learnt that her suit had been dismissed so she filed this Appeal. It is not clear whether the Appellant applied to set aside the order for dismissal when she left hospital.

Sometime in 2018, she visited the 1st Respondent's office to confirm if the records pertaining to her parcels of land were in order only for the clerk at the company to inform her that titles to the suit parcels of land were being processed in favour of the 2nd Respondent. She pleaded with the court to grant stay.

The Appellant also swore a supplementary affidavit on 14/09/2018, where she deponed that she is the bona fide owner of the suit land and that she followed all the transfer procedures to acquire the land. She annexed a bundle of documents showing the chronology of events on the transfer of the suit land to her name.

Despite being served with the application, the Respondents did not file responses to the application. The Appellant filed submissions which the court has considered.

This being an application for stay, the legal burden was on the Applicant to adduce evidence to show what she will suffer loss if stay is not granted. The Appellant failed to demonstrate the loss she stands to suffer if the orders of stay sought are not granted. There is not sufficient evidence upon which this court can grant the orders sought by the Appellant. The order dismissing the suit was a negative order, and is not

capable of being stayed.

The application 19/01/2018 is dismissed with no orders as to costs.

Dated and delivered at Nairobi this 8th day of August 2019

K.BOR

JUDGE

In the presence of: -

Rahab Wanjiru Kiarie- the Appellant

Mr. V. Owuor- Court Assistant

No appearance for the Respondents