



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA**

**AT NAKURU**

**ELC NO. 136 OF 2014**

**ANTONY TED ANDREW HOAREAU.....PLAINTIFF**

**VERSUS**

**MARY MUTHONI WANJOHI.....DEFENDANTS**

**RULING**

***(Application for stay of execution pending appeal; principles to be applied; judgment making an order for cancellation of the title of the applicant; land in issue being vacant land in possession of the applicant; stay granted on condition that the applicant does not deal with the land and does not make any developments on it)***

1. The application before me is that dated 3 January 2019 filed by the unsuccessful defendant. The application is brought pursuant to the provisions of Order 42 Rule 6 of the Civil Procedure Rules and seeks orders of stay of execution of the judgment herein pending hearing and determination of an appeal to the Court of Appeal.

2. To put matters into context, the plaintiff/respondent claimed to have purchased the land parcel Naivasha/Mwihiringiri Block 5/595 (the suit land) from one Stephen Mwangi Wangethi, the previous registered owner, who then handed over to him all the transfer instruments. The plaintiff contended that he then gave these instruments to one James Kariuki Kiongo, an agent, to transfer the same into his (plaintiff's) name. Instead, the said agent transferred the land to the defendant/applicant. In the suit, the respondent inter alia sought to have the title of the applicant cancelled and the same be registered to him. The applicant filed defence where she averred inter alia that the suit land was properly transferred to her. I heard the case and decided in favour of the plaintiff/respondent in a judgment that I delivered on 20 November 2018. It was my view that Mr. Kiongo was a fraudster who had no land to sell to the applicant and thus her title was not properly acquired. I directed that her title be cancelled and the same to revert back to the name of the previous proprietor, Stephen Mwangi Wangethi, and I also ordered that she vacates the suit land within 14 days of the judgment. Aggrieved, the applicant lodged a Notice of Appeal and thereafter filed this application for consideration. She has asked that the status quo be maintained pending hearing of the appeal, for if her title is cancelled, there is a risk that the same may be sold thus rendering the appeal an academic exercise.

3. In his reply, the respondent has averred that he cannot do anything with the suit property as it was ordered reverted back to Stephen Mwangi Wangethi.

4. I have considered the matter alongside the submissions of Mr. Karanja Mbugua, learned counsel for the applicant, and Mr. Orege, learned counsel for the respondent. The application is one for stay of execution pending appeal and Order 42 Rule 6 thus applies. The same provides as follows :-

*Order 42 Rule 6 (2)*

*(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 my ultimately be binding on him has been given by the applicant.*

5. From the above, it will be seen that there are three elements that need to be satisfied being :-

(i) That the application has been made without unreasonable delay;

(ii) That the applicant stands to suffer substantial loss if the order of stay is not made;

(iii) That the applicant is ready to furnish security.

6. On the first element, that of delay, I do not think that it can be argued that this application has been filed after considerable delay, for judgment was delivered on 20 November 2018, and this application was filed on 4 January 2019. On whether the applicant stands to suffer substantial loss, I am persuaded that she will suffer substantial loss if the decree is executed, for there is a risk that once title to the land reverts back to Stephen Mwangi Wangethi, he may dispose of the same, and the same may not be available in the event that the applicant succeeds on appeal.

7. The only issue left is security. The land is vacant undeveloped land in the possession of the applicant. I will direct the applicant not to erect any structures on the land nor plant any permanent crops on it. She is also barred from selling, charging, leasing, or in any other way entering into any disposition on the land. It will be her responsibility to ensure that the land is retained in the same status as it currently until the appeal is finalized. There is also issued an order of inhibition, inhibiting the registration of any disposition in the register of the suit land pending hearing and determination of the appeal.

8. The costs of this application shall abide the costs of the appeal.

9. Orders accordingly.

**Dated, signed and delivered in open court at Nakuru this 30<sup>th</sup> day of September 2019.**

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**

**In presence of :-**

Ms. Kabalika holding brief for Mr. Orege for plaintiff/respondent.

Ms. Karuga holding brief for Mr. Karanja Mbugua for defendant/applicant.

Court Assistant: Nancy Bor/Alfred Cheron.

**JUSTICE MUNYAO SILA**

**ENVIRONMENT & LAND COURT AT NAKURU**