



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC CASE NO. 414 OF 2013

SIMON NJAGI NJOKA.....PLAINTIFF

VERSUS

JAMES GATIMU MURIITHI.....1ST DEFENDANT

LEONARD MURIITHI MARITHUKU.....2ND DEFENDANT

JOHNSON CHEGE MWANGI.....3RD DEFENDANT

GATIMU KANYI.....4TH DEFENDANT

JOSEPH MURIUKI GATIMU.....5TH DEFENDANT

FAUSTO MWAI GATIMU.....6TH DEFENDANT

RULING

INTRODUCTION

By a Notice of Motion dated 6th August 2019, the applicant seeks the following orders:

(a) The inhibition order, caution and/or restriction registered against the title of land parcel number BARAGWE/KARIRU/219 be lifted.

(b) Costs of the application be provided for.

The application is supported by the affidavit of Johnson Chege Mwangi, the 3rd defendant herein, numerous annexures thereto and grounds shown on the face of the said application. In response to that application, the plaintiff/respondent filed grounds of opposition dated 16th September 2019 in which he averred that he has sought for the opinion of the Court of Appeal and has filed a Notice of Appeal dated 19th August 2019.

The brief facts of this case is that the plaintiff had sued the defendants jointly and severally for a declaration that the reinstatement of the original land parcel Number BARAGWE/KARIRU/219 was fraudulent and that the sub-division thereof of parcel No. BARAGWE/KARIRU/1931 and 1932 be restored. The plaintiff further sought for orders of eviction against the defendants from parcel No. BARAGWE/KARIRU/1932 and a permanent injunction to issue against the defendant from purporting to be owners of parcel No. BARAGWE/KARIRU/1932. After hearing the parties, this Court rendered itself on the issues in dispute on 19th July 2019 whereby the suit was dismissed with costs.

APPLICANT'S CASE

The applicant/3rd defendant stated that he is the 3rd defendant herein and one of the registered owners of land parcel number BARAGWE/KARIRU/219 with a share of 0.20 Hectares. He further stated that the plaintiff had initially instituted this suit in Nyeri High Court as HCCC No. 3 of 2009 claiming to have some interest over the suit land. Some orders were issued to preserve the suit property. When the case was finally heard, this Court delivered its judgment whereby the same was dismissed. He contends that there is need to have any restriction or inhibition registered against the title in respect of the suit property be removed so that they can enjoy fully the fruits of their judgment.

PLAINTIFF'S CASE

The plaintiff in his grounds of opposition stated that he was dissatisfied with the judgment of the Court and has sought the opinion of the Court of Appeal and has filed Notice of Appeal dated 19th August 2019.

LEGAL ANALYSIS

I have considered the Notice of Motion, the supporting affidavit and the rival submissions. I have also considered the submissions by counsels and the law. It is not in dispute that the dispute between the plaintiff and the defendants was determined when judgment was delivered on 19th July 2019 by dismissing the case with costs. The plaintiff/respondent in his two grounds of opposition stated that he was dissatisfied with the judgment of this Court and has sought opinion from the Court of Appeal and has even filed a Notice of Appeal dated 19th August 2019.

Whereas it is the right of every litigant who is aggrieved by any decision delivered by a trial Court to exercise his right to move to the Appellate Court, such appeal is not a stay in itself. The unsuccessful litigant must bring himself within the relevant statutory laws and satisfy the requirements for stay pending appeal. In this case, the plaintiff/respondent ought to have filed the relevant application under **Section 42 Rule 6 (2) CPR** for stay pending appeal. As I go through the pleadings in this case, I have not come across any application for stay under **Order 42 Rule 6 CPR**. As a parting shot, it is my considered opinion that judgment being the tail end of litigation between litigants, a successful litigant in such legal disputes should not be kept away from enjoying the fruits of his judgment save as provided for under the law.

The final order that comments in this application is that the same is allowed and I hereby allow it with costs to the applicant.

READ, DELIVERED and SIGNED in open Court at Kerugoya this 18th day of October, 2019.

E.C. CHERONO

ELC JUDGE

18TH OCTOBER, 2019

In the presence of:

1. M/S Namboi holding brief for Maina Kagio for the 3rd Defendant
2. Mr. Ndana for the 1st, 5th and 6th Defendants
3. Martin Mbogo – Court clerk.