



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC APPEAL NO. 3 OF 2017

FORMERLY NAKURU HCA NO. 108 OF 2013

ISAAC PERE.....APPELLANT

-VERSUS-

TIMINA LEKENI OSOI.....RESPONDENT

RULING

By a Notice of Motion dated 24th July, 2019 and brought under Order 42 Rule 6 and Order 51 Rule 1 of the Civil Procedure Rules the Appellant sought for an order of stay of execution of the decree and Judgement issued on 2nd July, 2019 pending the hearing and determination of the Appellant's intended appeal.

The Application is based on the grounds that the Appellant has filed a Notice of Appeal and since he has no alternative land he is apprehensive that his Appeal will be rendered nugatory. The Appellant further stated that his application was not made unreasonable delay and that he has an arguable appeal and he is ready and willing to abide by any condition that the court will impose. The Application was also supported by the Affidavit of Issack Pere in which he averred and expounded on the grounds on which the Application is based.

The Application was opposed by the Respondent who filed a Replying Affidavit. The Respondent contended that the dispute between himself and the Appellant has been in court for over 10 years and stated that during the time, he had filed a number of cases in Nakuru which were all dismissed and that despite the orders of the court he never paid any costs. The Respondent further contended that the Application is defective as the Appellant had failed to annex a draft Memorandum of Appeal.

I have read the Application before me and the submissions filed by the parties and it is now well established what are the ingredients that a party must meet before the grant of stay of execution.

In the instant Application the Appellant contends that he will suffer substantial loss in the event that the stay of execution is not granted as the Respondent may commence execution proceedings and that he has no alternative land and in the event that execution commences his appeal will be rendered nugatory.

The Respondent in his submissions contended that the Appellant having failed to obtain copies of proceedings and hence there is nothing to show that his intended appeal is infact underway.

I have considered the Application before me and the issues raised by the parties in their submissions and I am persuaded that the subject matter is a matter touching on land which if one is disposed off even by legal means becomes highly emotive and I am of the view that the Appellant may suffer substantial loss if the orders sought are not granted and in the circumstances, I do exercise my discretion and I do grant the Appellant a stay of execution of the Judgement dated 2nd July, 2019 subject to the Appellant filing the intended Appeal within 60 days of this ruling.

Orders accordingly.

DATED, SIGNED and DELIVERED in open court at NAROK on this 19th day of November, 2019

Mohammed Kullo

Judge

19/11/19

In the presence of:-

Tanyasis holding brief for Geoffrey Otieno for the Plaintiff/Applicant

N/A for the Defendant/Respondent

CA:Kimiriny

Mohammed Kullow

Judge

19/11/19