

REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MOMBASA

ELC APPEAL NO. 11 OF 2019

FAMAU AMANI, RASHID TEWA & 3 OTHERS.....PLAINTIFFS

VERSUS

ABDULLAHI HASSAN FARAH.....DEFENDANT

RULING

(Stay pending appeal; stay granted subject to deposit of security; value of security quantified by court)

1. The application before me is that dated 26 March 2019 which seeks a stay pending appeal. In the original suit, the appellants were sued by the respondent, in the Chief Magistrate's Court at Mombasa, over the occupation of the land parcel Mombasa/Block XI/795 which title is held by the respondent. Judgment was entered on 22 February 2019 in favour of the respondent and the plaintiff granted an order of eviction. The appellants have now preferred an appeal against that judgment and wish to have a stay of execution pending hearing of their appeal.

2. Mr. Gikandi, learned counsel for the respondent, in principal, did not have any objection to stay being granted but wished to have the appellants deposit security. I directed parties to try and agree on the issue of security but they were unable to do so. They thus asked me to make the requisite provision for security pending appeal.

3. The grant of stay means that the appellants will continue enjoying the suit premises to the detriment of the respondent, who is entitled to the fruits of his judgment. It follows that in the appellants need to deposit security in favour of the respondent so that in case they lose the appeal, the appellant is compensated for the duration that he has been kept out of the property. This, ideally, would be the loss of user that he will suffer. I asked both Mr. Gikandi for the respondent and Mr. Mkan for the appellants what estimate they can give of the loss that the respondent stands to suffer. Mr. Mkan thought that if the premises was let out, it cannot fetch more than Kshs. 20,000/= whereas Mr. Gikandi thought that it could fetch double that. Doing the best that I can, I will meet counsel's valuation in the middle, and take the figure of Kshs. 30,000/= as the average loss that may be suffered by the respondent. The judgment was delivered in February this year, and no record of appeal has been filed. The earliest that judgment may be delivered in this appeal, in my rough estimation, is June next year. My view is that a deposit of security equivalent to one and a half years of average rent is reasonable. This is the sum of Kshs. 540,000/=. The costs of the suit in the lower court should also be deposited as part of the security.

4. I therefore grant a stay of execution of the judgment subject to deposit of security in the sum of Kshs. 540,000/= within the next 30 days from today and deposit of taxed costs within 30 days of their assessment. These monies should be deposited in a joint interest earning account in the names of both counsel for the applicants and the respondent. If the monies are not made available as directed above, then this order of stay will lapse and the respondent will be at liberty to execute the judgment. If the appellants lose the appeal, the money deposited together with interest will be transmitted to the respondent, but if the appellants succeed, the money deposited together with interest, will be returned to them.

5. On the costs of this application, if the applicants abide by the order on deposit of security, the costs will abide the outcome of the appeal. If they do not, then the respondent will have the costs of this application.

6. Orders accordingly.

DATED, SIGNED and DELIVERED at MOMBASA this 6th day of November 2019.

MUNYAO SILA,

JUDGE.

IN THE PRESENCE OF:

Mr. Mkan for the appellant.

Mr Gikandi for the respondent.