

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC SUIT NO. 365 OF 2014

RAVJI KARSANI SANGHANI.....PLAINTIFF

=VERSUS=

PETER GAKUNU.....DEFENDANT

RULING

What is before me is the plaintiff's application brought by way of Notice of Motion dated 25th September, 2019 in which the plaintiff has sought an order of injunction restraining the defendant from interfering with his possession of all that parcel of land known as L.R No. 209/11091 pending the hearing and determination of an appeal he intends to file against the judgment made by this court on 17th May, 2019. The application was served upon the defendant's advocates on 4th October, 2019 and an affidavit of service filed in court on 5th December, 2019. When the application came up for hearing on 9th December, 2019, the defendant's advocates did not attend court. Ms. Mokaya advocate who appeared for the plaintiff/applicant relied entirely on the affidavit in support of the application and urged the court to allow the same as prayed.

I have considered the plaintiff's application together with the supporting affidavit. By this court's judgment delivered on 17th May, 2019 which is the subject of the intended appeal, the plaintiff's claim over the suit property by adverse possession was dismissed with costs. It was not disputed at the trial that the plaintiff was in possession of the suit property and had developed the same. Following the dismissal of the plaintiff's suit, the defendant is now at liberty to take possession of the suit property. The defendant may also sell, transfer or charge the same.

The plaintiff is dissatisfied with the judgment of the court and intends to exercise his right of appeal. He has filed a notice of appeal and has also requested for the certified copies of the proceedings to enable him lodge the intended appeal to the Court of Appeal. The averments contained in the plaintiff's affidavit in support of the application to the effect that his intended appeal may be rendered nugatory if the injunction sought is not granted have not been controverted by the defendant who did not defend the application.

I am satisfied that the plaintiff's application has merit. However, since the orders sought are in the nature of a stay of execution pending appeal, the court will impose conditions for grant of the same. In conclusion, the Notice of Motion application dated 25th September, 2019 is allowed in terms of prayer 2 thereof on condition that the plaintiff shall deposit in court as security a sum of Kshs. 2,000,000/= within thirty (30) days from the date hereof in default of which the stay shall stand discharged without any further reference to the court.

Dated and Delivered at Nairobi this 11th Day of December 2019

S. OKONG'O

JUDGE

Ruling read in open court in the presence of:

Mr. Muganda holding brief for Mr. Solonka for the plaintiff

N/A for the Defendants

Ms. C. Nyokabi - Court Assistant