

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 287 OF 2013

ARHENDT MUTSANZI MONDI.....PLAINTIFF

VERSUS

LAWRENCE JUMBA.....DEFENDANT

RULING

The application dated 2.8.2017 seeks orders that there be stay of execution of the judgment entered against the defendant on 21.7.2017 pending the hearing and determination of the pending appeal. The application is based on grounds that the defendant is dissatisfied with the judgment of the court entered on 21st July, 2017 and that the defendant intends to appeal against the said judgment herein and if the plaintiff is allowed to execute against the defendant the appeal will be rendered nugatory. That the defendant's intended appeal has overwhelming chances of success. The defendant is prepared to comply with any such condition(s) as this Honourable court may deem just. The defendant states that should he comply with the decree of the court, and the intended appeal succeeds, the said defendant would suffer loss and damage. The defendant has sufficient cause for seeking the orders sought. The application is supported by the affidavit of Lawrence Jumba who states that he has preferred an appeal and that the plaintiff may prefer to evict him from the land anytime. He argues that the appeal has an overwhelming chance of success.

In the replying affidavit, Arhendt Mutsanzi Mondl states that the applicant has neither extracted the decree nor annexed a copy of the same to the Notice of Motion and that the applicant has not served the Notice of Appeal. The applicant was granted 60 days to remove his belongings on the land and to vacate the premises and lastly, the respondent states that the applicant has been in the habit of obtaining profit of the soil by making bricks.

I have considered the application, replying affidavit and rival submission and do find that the application has been filed without undue delay as it was filed within the 60 days granted by the court. However, I do not find evidence of substantial loss by the applicant if stay of execution is not granted. If anything, there is evidence of wastage of the property by the applicant cutting trees and burning bricks. The applicant has not demonstrated that he has high chances of success since it is claimed that the property belonged to his mother and yet it has not been demonstrated that he has capacity to sue on behalf of his late mother. The defendant is not claiming adverse possession but an inheritance from his mother who had some interest in the property and yet he is not the Administrator of the estate of his deceased mother. The application lacks merit and is dismissed with costs.

Dated and delivered at Eldoret this 20th day of April, 2018.

A. OMBWAYO

JUDGE