



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT

AT MILIMANI

LAND CASE NO. 357 OF 2010

BERNARD KARIUKI WARURU.....PLAINTIFF

-VERSUS-

FRANCIS WAWERU.....1ST DEFENDANT

MOSES MWANGI.....2ND DEFENDANT

THE CITY COUNCIL OF NAIROBI.....3RD DEFENDANT

DAVID MWANGI.....4TH DEFENDANT

RULING

1. This is a Ruling in respect of an application by the fourth defendant/applicant seeking stay of execution pending appeal. The applicant contends that he has instructed his advocates to file an appeal against judgement delivered on 23rd November 2017. The applicant contends that his appeal has high chances of success and that if stay is not granted, he will suffer substantial loss in that his permanent building would have been demolished.

2. The Plaintiff/Respondent opposed the applicant's application based on grounds of opposition filed in court on 18th February 2018. The respondent contends that the applicant's application is an abuse of the court process as the applicant has neither filed notice of appeal or applied for proceedings. The application is therefore an afterthought.

3. I have gone through the application herein as well as the opposition to the same by the respondent. I have also perused the court record and gone through the submissions by the parties. It is clear that the applicant has not filed any notice of appeal or applied for proceedings. The applicant in his submissions contends that he has not preferred any appeal as he is awaiting for a survey report which will be crucial at the intended appeal.

4. The time for filing notice of appeal has already lapsed. Order 42 Rule 6 (1) the Civil Procedure Rules is clear that no appeal shall operate as stay of execution of proceedings. In this case, there is no appeal which has been preferred. Under Order 42 Rule 6 (4), an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court, notice of Appeal has been given. As the applicant has not filed any notice of Appeal, he cannot move the court for stay of execution under Order 42 of the Civil Procedure Rules. I find that the applicant's application not only lacks merit but is an abuse of the process of the Court. The same is hereby dismissed with costs to the Plaintiff/Respondent.

It is so ordered

Dated, Signed and delivered at Nairobi on this 24th day of May 2018.

E.O.OBAGA

JUDGE

In the Presence of:-

Mr Mogoi for Mr Kamau for Plaintiff

Court Assistant: Kevin

E.O.OBAGA

JUDGE