



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**E.L.C. CASE NO. 1577 OF 2014**

**AKASH HIMATLAL DODHIA.....PLAINTIFF**

**VERSUS**

**DOROTHY MARGARET WANJIKU KUNG'U.....1<sup>ST</sup> DEFENDANT**

**THE CHIEF LAND REGISTRAR.....2<sup>ND</sup> DEFENDANT**

**RULING**

The 1<sup>st</sup> Defendant seeks an order of stay of execution of the judgement of this court delivered on 12/10/2017 so that L.R. No. 7741/442/Kitisuru belonging to the Estate of Samuel Ndung'u Kung'u is not transferred to the Plaintiff before her intended appeal is heard and determined. The 1<sup>st</sup> Defendant contends that the result of the judgement delivered was to validate the sale agreement entered into by the Plaintiff and 1<sup>st</sup> Defendant which she is challenging on appeal. She maintains that her appeal will be rendered nugatory if the Suit Property is transferred to the Plaintiff.

The Plaintiff opposed the application urging that there was delay of 26 days in filing the application and that the applicant had failed to establish sufficient cause for the grant of the orders sought. She had neither demonstrated that she will suffer substantial loss if orders of stay are not granted nor had she furnished security for the performance of the decree. The Plaintiff avers that he has been kept out of the Suit Property for over 6 years and should now enjoy the fruits of his judgement.

In his Affidavit, the Plaintiff averred that he is prepared to give an undertaking that if the suit property is transferred to him, he will not transfer it or offer it as security to a financial institution to secure repayment of a loan.

Parties filed submissions which the court has considered. To grant an order of stay, the court must be satisfied that substantial loss may result unless the order is made and that the application was made without unreasonable delay. The 1<sup>st</sup> Defendant is well within her right to pursue her appeal.

The court is not satisfied that the 1<sup>st</sup> Defendant's appeal will be rendered nugatory if this court does not grant orders of stay. If the 1<sup>st</sup> Defendant succeeds on her appeal, the Plaintiff can transfer the Suit Property back to the 1<sup>st</sup> Defendant or the estate of her late husband since the land will still be available. It will not have wasted away. The records at the lands office will be rectified to reflect that the transfer to the Plaintiff has been cancelled if the appeal succeeds.

The application dated 31/10/2017 is dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this 30<sup>th</sup> day of August 2018.

**K. BOR**

**JUDGE**

**In the presence of: -**

Mr. Mwihuri holding brief for Mr. Kimani for the Plaintiff

Ms. Apolot holding brief for Mr. Gikandi for the 1<sup>st</sup> Defendant

Mr. Terrell for the 2<sup>nd</sup> Defendant

Mr. V. Owuor- Court