



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA

ELC APPEAL NO. 4 OF 2018

DAVID GITONGA KANGANGI.....APPELLANT

VERSUS

MARY WAIRIMU KANGANGI.....RESPONDENT

RULING

BACKGROUND

The application before me is the Notice of Motion dated 6th September 2018 and filed on 7th September the same year. It is brought **under Section 68 and 69 of the Land Registration Act**. The Applicant is seeking an order of inhibition restraining the Respondent from selling, charging, transferring, alienating or in any other way interfering with land parcel numbers KIRINYAGA/GATHIGIRIRI/2803, 2804, 2805, 2806 and 2807 pending the hearing and determination of this application. The Applicant is also seeking similar orders pending the hearing and determination of the appeal. The application is premised on grounds apparent on the face of the application and a supporting affidavit of the applicant sworn on 6th September 2018. Attached to that affidavit is a decree and order from the trial magistrate's Court in SPMCC No. 55 of 2017 which presumably is the subject of the intended appeal. Also attached in that supporting affidavit is another order from the same Court issued by another magistrate Hon. G.M. Mutiso Principal Magistrate from the same station staying execution of the said decree pending hearing and determination of the appeal. The application is opposed by a replying affidavit by the Respondent sworn on 25th September 2018.

APPLICANT'S CASE

The Applicant in his supporting affidavit has deponed that he was dissatisfied with the judgment of the trial Court and has lodged an appeal and unless the orders sought are granted, he will suffer irreparable loss. He deponed that the appeal has high chances of success. The Applicant therefore seeks the preservation of the suit properties so as not to render the intended appeal nugatory.

RESPONDENT'S CASE

The Respondent on his part opposed the application arguing that

the applicant is a stranger to her and that she is the absolute proprietor of the suit properties which she has even transferred to her sons and daughters. The Respondent also contends that this application has been overtaken by events and that the same has no chances of success as the same is brought in bad faith with the sole aim of buying time and has no merit at all. The Respondent also deponed that the Deputy County Commissioner summoned her on 7th August 2018 with a view to seeking restrictions of the land parcels in question but after confirming that the suit properties belonged to her, she restrained herself and withdrew the summons.

ANALYSIS AND DECISION

I have carefully considered the Notice of Motion together with the supporting affidavit and annexures thereto. I have also considered the replying affidavit and the applicable law. The Applicant is moving this under **Section 68 and 69 of the Land Registration Act** and all enabling provisions of the law. The Applicant is seeking orders of inhibition pending hearing and determination of this application as well as the intended appeal. An application for the nature of orders being sought is ordinarily under the provisions of **Order 41 Rule 4(2) Civil Procedure Rules** where it provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless:

***(a) The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made unless, the Court is satisfied that substantial loss may result to the applicant unless the order is made, and that the application has been made without unreasonable delay*”**

The judgment and decree of the trial Court was issued on 2nd March 2018. This application was filed on 7th September 2018. The application has been brought almost seven months after the decree was issued. I find the application has not been made without un-reasonable delay. The Applicant has not annexed a copy of the Memorandum of Appeal indicating his grounds of appeal. It is from those grounds that this Court will determine whether the Applicant has high chances of success in the intended appeal. There is even no record of appeal compiled and annexed to the application. The application disguised as a stay of execution but brought under the provisions of the **Land Registration Act, 2012** is largely incompetent and lacking in merit. Suffice to add that the orders of stay of execution issued by Hon. G.M. Mutiso, Principal Magistrate Wanguru Law Courts were issued without satisfying the conditions for the grant of such orders as set out under **Order 41 Rule 4 Civil Procedure Rules**. These orders are hereby vacated. In the upshot, the application dated 6th September 2018 be and is hereby dismissed with costs to the Respondent.

READ and SIGNED in the open Court at Kerugoya this 26th Day of October, 2018.

E.C. CHERONO

ELC JUDGE

26TH OCTOBER, 2018

In the presence of:

Mr. Kagio for Appellant

Court clerk Mbogo