



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

PETITION NO. 13 OF 2015 CONSOLIDATED WITH PETITION NO. 14A OF 2015

**IN THE MATTER OF THE CONSTITUTION OF KENYA (2010) ALLEGED
CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLE 40
AND 47**

AND

**IN THE MATTER OF THE PIECE OF LAND KNOWN AS ELDORET MUNICIPALITY
BLOCK 9/2810 AND SUB-DIVISIONS CREATED THEREUNDER KNOWN AS ELDORET
MUNICIPALITY BLOCK 9/3115 TO 3126 INCLUSIVE**

BETWEEN

**MOSES KIPTOO RONO AND KEVIN KENNETH OKWARA.....
.....PETITIONERS**

VERSUS

**THE CHIEF LAND REGISTRAR.....1ST
DEFENDANT**

**THE LAND REGISTRAR, UASIN GISHU COUNTY.....2ND
RESPONDENT**

**THE NATIONAL LAND COMMISSION.....3RD
RESPONDENT**

**THE DIRECTOR OF SURVEY.....4TH
RESPONDENT**

**ATTORNEY GENERAL.....5TH
RESPONDENT**

**BEN MUNERIA WESONGA.....6TH
RESPONDENT**

RULING

The application before court is dated 3.5.2018 by the 6th respondent seeking for orders of stay of execution of the judgment delivered on the 20th April, 2018 and all consequential orders or further

proceedings in this matter pending hearing and determination of the intended appeal. The application is based on grounds that the 6th respondent intends to appeal against the judgment of the court being dissatisfied with it. That unless the application is allowed, the applicant's intended appeal will be rendered nugatory and the applicant shall suffer substantial loss. It is argued that the applicant has a good arguable appeal which has high chances of success. Moreover, that the application is filed without delay.

In the supporting affidavit, the applicant states that unless the stay of execution pending appeal is granted, he is likely to suffer substantial loss as the Petitioner, Moses Kiptoo may dispose the suit land hence defeating his interest. Moreover, that his title has been made worthless.

The applicant argues that he has an arguable case in the Court of Appeal. He states that the application has been filed without undue delay.

In reply to the application, the Petitioners state that the application dated 3rd May 2018 is brought in bad faith lacks merit is frivolous and ought to fail and that the applicant has not demonstrated any substantial loss he is likely to suffer if stay of execution is not granted and the judgment of the court merely dealt with irregularities.

I have considered the application and the rival submissions and do find that the application was filed without unreasonable delay as it was filed within 14 days.

On whether the court can issue an order of stay of execution of an order of certiorari, I do find that no return can be made in respect of Judicial review, orders of ***Certiorari, Prohibition and Mandamus***. The court having quashed, it is this court's view that once it grants an order of ***Certiorari***, the same cannot be stayed because doing so will be tantamount to reviewing or reversing the order. The order can only be reviewed by the Court of Appeal.

The court granted an order for declaration that the petitioners are the registered owners of a leasehold interest over land parcels Eldoret Municipality/Block 9/3116 and Eldoret Municipality/Block 9/3115 as the records show that the property is registered in the Petitioners' names. The court further granted an order of certiorari quashing the decision of the 1st respondent to cancel the lease and certificates of lease for parcel number Eldoret Municipality/Block 9/2810, the mother title to the title issued. The court further granted certiorari quashing the amendment registry index map for land parcel No. Eldoret Municipality/Block 9/2810 in favour of the 3rd respondent. Moreover, the court issued an order of ***Certiorari*** quashing any titles issued to the 3rd respondent in respect of Eldoret Municipality/Block 9/2810.

This court is of the considered view that an order of certiorari cannot be stayed or suspended pending appeal. The order of certiorari can only be undone on appeal.

In ***Kuria Mbae Vs The Land Adjudication Officer, Chuka HCCA No. 237 of 1987 (unreported)***, the High Court [*Mbuto & Maiyo JJ*] held;

“In our view therefore, it would appear that this court has no jurisdiction to stay, review or set aside or quash an order of certiorari once it has been made.”

In ***Republic Vs Municipal Council of Mombasa & 2 Others, Civil Application No. Nai 15 of 2007***, the court held;

“This court has no jurisdiction under Rule 5(2)(b) to stay the nullification of the resolution and contract. It can only stay the execution of the decree or orders of a superior court. The order of certiorari granted by the superior court is not capable of execution as the superior court did not order any party to do anything or refrain from doing anything or to pay any sum of money other than costs. Further, the order of certiorari granted by the superior court quashing the resolution of the council and the agent is final and conclusive and took effect immediately. If the application is

allowed, the effect would be to reverse the decision of the superior court. The superior court can only reverse the order of certiorari on appeal.

The import of the above is that once this court grants an order of certiorari, it cannot return on the same for a stay of execution or suspension. It is only the Court of Appeal that can reverse the decision on appeal. The upshot of the above is that the application has no merit and is dismissed with costs.

Dated and delivered at Eldoret this 21st day of November, 2018.

A. OMBWAYO

JUDGE