



IN THE REPUBLIC OF KENYA

ENVIRONMENT AND LAND COURT AT NAIROBI

MILIMANI LAW COURTS

ELC NO. 683 OF 2015

KEEKONYOKIE COMMUNITY TRUST..... PLANTIFF/APPLICANT

[Through the duly appointed trustees]

=AGAINST=

MOSES PARANTAI1ST DEFENDANT/RESPONDENT

JOHN KAMUYE OLE KIOK.....2ND DEFENDANT/RESPONDENT

THE CABINET SECRETARY MINISTRY OF LANDS,

HOUSING & URBAN DEVELOPMENT.....3RD DEFENDANT

RULING

1. This is a Ruling in respect of a Notice of Motion dated **24th October 2016**, seeking stay of execution of a Ruling delivered on **14th October 2016**, pending hearing and determination of an appeal preferred against the Ruling. The appointed trustees of **Keekonyokie Community Trust** (applicants) had filed a suit against two former trustees as well as the Cabinet Secretary Ministry of Lands, Housing and Urban Development.
2. The applicants contemporaneously filed a Notice of Motion on the same date in which they sought an order that the original title in respect of **LR No. Ngong/Ngong/12418/** held by the Respondents should either be deposited with their Advocates or in Court pending the hearing and determination of the suit. They also sought orders of injunction restraining the Respondents from in any manner sub-dividing, selling or interfering with land known as **Ngong/ Ngong/12418**.
3. Before the Notice of Motion should be heard, the Respondents raised a preliminary objection on the ground that the applicants had no locus stand to file the suit against them. The trial judge Hon. Lady Justice Gacheru directed that both the preliminary objection and the Notice of Motion be disposed of together by way of written submissions.
4. The parties filed their respective submissions which were considered by Justice Gacheru. In a Ruling delivered on **14th October 2016**, Justice Gacheru dismissed the applicant's Preliminary Objection and ordered that the original title in respect of **Ngong/Ngong/12418** be deposited in Court within 14 days and ordered maintenance of **Status Quo** pending hearing and determination of the suit.

APPLICANTS APPLICATION

5. The applicants now contend that they have preferred an appeal against the Ruling of **14th October 2016**. They contend that the appeal will be rendered nugatory unless stay of execution of the Ruling is given. That the applicants are apprehensive that the Respondents will somehow get the title from the Court and proceed to do something which will not be in the interest of the **Keekonyoike Community Trust**.

6. The applicants further contend that the issue of who are the duly appointed trustees ought to have been sorted out first before any orders could be given.

RESPONDENTS CONTENTION

7. The Respondents have opposed the applicant's application based on a Replying Affidavit sworn by **Moses Masek Monik** the Chairman of Board of Trustee by the Plaintiff who contends that the applicants have not demonstrated that they will suffer substantial loss should the orders of stay be declined. That the applicants have demonstrated lack of faith in Court when they allege that the Respondents may get the title deposited from court.

8. The Respondents further contend that the issue of who are the duly appointed trustees of the Plaintiff will only be determined after endurance is adduced in a full trial and that the allegations by the applicants that the appeal will be rendered nugatory are unfounded.

9. This being an application for stay pending appeal, the applicants cannot be granted stay unless the conditions set out in **Order 42 Rule (6)** are met. First, the application has to be brought without unreasonable delay. Secondly an applicant has to demonstrate that should stay be declined. Thirdly, there has to be such security as the Court orders for the due performance of the order or decree as may ultimately be binding on the applicant.

10. I have carefully gone through the pleadings herein, the submissions by the applicants as well as case law on the subject of stay pending appeal. The Ruling being appealed against was delivered on **14th October 2016**. The present application was filed on **24th October 2016**. This was even before the **14 days** granted to the applicants to deposit title in court lapsed. I therefore find that in the circumstances, the application was made without unreasonable delay.

11. Have the applicants demonstrated that they will suffer substantial loss if stay is not granted?. Demonstration of substantial loss is the cornerstone for grant of any stay. I have gone through the Ruling of Lady Justice Gacheru which I annexed to the applicants' application. The bone of contention in this suit appears to be who are the only appointed trustees of **Keekonyokie Community Trust** whereas the applicants seem to agree to some extent that there was a meeting in which they were allegedly removed, they seem to contend that the meeting was illegally convened by a few members and that the purchasers leading to registration of change of trustees was not done in accordance to the law.

12. On the other hand, the Respondents seems to contend that as the duly appointed trustees they should be the one running the affairs of the Plaintiff and keeping the title to the property owned by the plaintiff. The judge appreciated the rival contentions and reached a decision that the title ought to be kept in a neutral place and the property preserved hence her orders.

13. The orders were purely made in the interest of the Plaintiffs members. I do not see what loss the applicants will suffer if they surrendered the title to court for safe custody pending the hearing and determination of the suit which centres on who are the lawful trustees. Documents which are deposited in Court are kept in accordance with the order of the court and no one can access the same unless with another court order to that effect. I therefore find the applicant's fears that the Respondents may access the title from the court to be unfounded.

14. The issue of security is normally considered if the applicant demonstrates that he is likely to suffer

substantial loss. If the Court were to finally find that the Respondents had no locus standi to bring up the suit will be dismissed and the applicants awarded costs and the title will be released to them.

CONCLUSION

15. It is on the above reasons that I find that the applicant's application lacks merit. The same is hereby dismissed with costs to the Respondents.

It is so ordered.

Dated, Signed and Delivered this at **Kitale** this **21st** day of **February, 2017**

E.O .OBAGA

JUDGE

In the presence of :-

..... Plaintiff

..... Defendant

Court Assistant :

E.O .OBAGA

JUDGE