



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

ELC NO. 174 OF 2015

STEPHEN KIBOWENPLAINTIFF

VERSUS

RAYMOND RUTO & 5 OTHERSDEFENDANTS

JERUTO TAKILI TENGEKYON & 2 OTHERS....PROPOSED DEFENDANTS

RULING

(Application for stay of proceedings; applicants having filed an application to be enjoined which was dismissed; appeal against that order; applicants now seeking stay pending appeal; application considered and dismissed)

1. The application before me is that dated 22 July 2016 filed by various persons who had wished to be enjoined to these proceedings as defendants, but which I declined in my ruling of 14 July 2016. In this application, the said persons, who are the applicants, are seeking an order of stay of these proceedings pending an intended appeal filed by them against my ruling of 14 July 2016. It is inter alia said by the applicants that they have an arguable appeal; that one of the applicants is over 83 years old and has been in possession of the property since the year 1962 and stands to be evicted; and that there is real danger that the intended appeal will be rendered nugatory.

2. The application is opposed and before I go to the gist of it, it is only prudent that I give a little background to it.

3. This suit was filed on 23 June 2015 by the plaintiff. In his plaint, the plaintiff pleaded to be the owner of the land parcel Lembus/Kilombe/157 which is land measuring about 67 acres. He pleaded that he purchased this property on 27 May 2014 in a public auction, the property having been charged by its previous registered proprietor to the Agriculture Finance Corporation (AFC). After the auction sale, AFC failed to transfer the property to the plaintiff which prompted him to file the case Nakuru ELC No. 218 of 2014. I heard that case and passed judgment in favour of the plaintiff. I ordered AFC to transfer the suit property to the plaintiff and this was duly done.

4. Upon becoming registered as proprietor, the plaintiff filed this suit, against 6 persons, for eviction. It is his case that these 6 persons are in illegal occupation of his land and attempts to take possession have been violently resisted. The 6 persons filed defence and it is this case which is pending hearing.

5. Through an application filed on 18 April 2016, the applicants (who are two persons by name, Jeruto Tapkili Tengekyon and Samwel Kipruto Chepkeitany) applied to be enjoined as 7th and 8th defendants to

this suit. They also applied that AFC be enjoined as 9th defendant. I heard this application, which I dismissed in my ruling of 14 July 2016. It has of course been mentioned that the applicants have appealed against that ruling hence this application for stay of proceedings.

6. The supporting affidavit is sworn by Samwel Kipruto Chepkeitany. He has averred that he was the original registered owner of the land in dispute before he sold it to Jeruto Tapkili Tengekyon. He has stated that he repurchased the suit land and made payments to AFC of over 4,600,000/=. He has deposed that he was shocked that AFC have secretly sold the land behind his back and that he was not a party to the suit Nakuru EC No. 218 of 2014. He has stated that the plaintiff has now instituted this suit against his children to his exclusion despite the fact that he is a necessary party. He has mentioned that he has appealed the ruling which denied his participation in this suit and believes that he has good prospects of success.

7. The application is opposed and both counsels filed written submissions which I have taken note of.

8. I have already pronounced myself on the issue whether or not I feel the applicants ought to be necessary parties. My view is that they are not necessary parties to this litigation. It is that decision which is the subject of appeal. Should I now stay these proceedings given my above decision ?

9. I am afraid that I am not persuaded that I ought to stay proceedings between the plaintiff and the 6 named defendants. The applicants are not parties to this suit and I do not see how they are going to be affected by this case proceeding, for the plaintiff has not sought any orders against them. If the applicants feel that they have a grievance worth pursuing, they suffer no prejudice by me not granting them an order of stay pending appeal, for they can as well file their own case for consideration.

10. A lot has been said by the applicants that the sale by AFC to the plaintiff was fraudulent. In my decision in ELC No. 218 of 2014, I was of the view that the sale is above board. I am afraid that I cannot revisit that decision in this suit which is what the applicants appear to be intent on doing. The applicants certainly have the option of looking at the available legal options that are open for them to pursue if they believe that the sale was fraudulent. However, I do not believe that staying these proceedings will serve any useful purpose or indeed assist them in their cause.

11. I honestly do not see the point of saying more. I am not persuaded to stay these proceedings and I therefore dismiss this application with costs.

Dated, signed and delivered in open court at Nakuru this 8TH day of March ,2017.

MUNYAO SILA

JUDGE

ENVIRONMENT & LAND COURT AT NAKURU

In the presence of :-