



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

ELC CAUSE NO. 264 OF 2017

FORMERLY NAKURU HCC NO. 28 OF 2010

PAUL MOROMBI SAOLI.....PLAINTIFF

-VERSUS-

SOITARA OLE SAOLI.....DEFENDANT

RULING

The Applicant has by way of Notice of Motion dated 5th May, 2016 sought orders for stay of execution of the Judgement and decree of Narok CMCC No. 30 of 2012 and other consequential orders and that the proceedings in Narok CMCC No. 30 of 2012 were an anullity and a further order of transfer of the court file in Narok CMCC No. 30 of 2012 to this court.

The said Application was based on various grounds namely that the plaintiff during the pendency of this suit No. Elc 28 of 2010 is brazen abuse of the court process filed Narok Civil Case No. 30 of 2012 suing over a parcel of land known as No. 60 OLKURTO adjudication section Narok South. That the said NAROK CMCC no. 30 of 2012 and the instant suit the subject land is over ownership of the above parcel of land while there was Judicial Review Application being Misc. Application No. 181 of 2008 which was also still pending.

Further that the proceeding in Narok CMCC No. 30 of 2012 were conducted without involvement of Applicant herein.

The Application was supported by the Affidavit of the Applicant which basically expounded on the grounds hereinabove stated.

The Respondent opposed the Application by way of filing a Replying affidavit dated 20th September, 2016 and Further Affidavit. The Respondent states that the matter the Applicant wishes to stay were heard and determined and no Appeal has been preferred against the said judgement in Narok CMCC NO. 20 of 2012.

The Respondent also in his response has challenged the prayer for transfer of the suit.

I have read the Application together with the Applicants Supporting Affidavit thereto. I have also read the Respondents Affidavit in reply to the said Application and heard submissions for counsel appearing for the parties.

The issues for determination is whether there are grounds for the court to order for stay of execution of

the judgement and decree of CMCC No. 30 of 2012 and whether there are grounds to order for the transfer of the suit.

On the first question having heard counsel for the parties the Application before is due that its fatally and incurably defective in the sense that this court is being asked to stay an order and judgement of the court without the Applicant having either filed a Notice of Appeal and an Appeal.

Secondly in the instant suit though the parties are the same the Applicant proceeded to file Narok CMCC No. 20 of 2012 in complete regard of the Rules of process. It is my opinion that in bringing the present application the Applicant seems to prefer an Appeal on the proceeding of an Appeal through the back door.

On the issue of transfer, it is my considered view that there remains nothing of the suit in CMCC No. 20 of 2012 that is capable of being transferred to this court for determination. The Applicant is asking for the transfer of a matter in which the trial court has made a finding, judgement entered and execution proceeding commenced which is highly untenable and crossly an abuse of the process of the court.

This court is being asked to exercise its supervisory jurisdiction in transferring a suit were non-exist and therefore the Applicant has not demonstrated what is there for the court to transfer.

In view of the above reasons I dismiss the Application dated 5th May, 2016 with costs to the Respondents.

DATED, SIGNED and DELIVERED in open court at **NAROK** on this 21st day of July 2017.

Mohamed N.Kullow

Judge

21/7/17

In the presence of:

Ms. Mukoye holding brief for Mr Otieno for the Defendant/Applicant

Ms. Mukira N/A for the Plaintiff

Plaintiff present in person

CA:Chuma