



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT IN KAKAMEGA
ELC APPEAL NO. 4 OF 2017
(FORMERLY HCA 15/2017)

ROSE L. WILE INDIMULI ::::::::::::::: PLAINTIFF

VERSUS

ELIKANA MUSA INDIMULI::::::::::::: DEFENDANT

BUTALI SUGAR CO. LTD:::::::::::::DEFENDANT

RULING

This application is dated 14th February 2014 and is brought under section 1A, 1B, 3, 3A, 65 (1) and 79 G of the Civil Procedure Act and order 22 rule 22 and order 42 rule 6 seeking the following orders:-

1. **THAT** this application be certified as urgent and service be dispensed with in the first instance.
2. **THAT** a stay of execution of decree in Butali SRMCC NO. 132 of 2015 be granted pending the hearing and determination of this application.
3. **THAT** this honourable court be pleased to grant a stay of execution of decree in Butali SRMCC NO. 132 of 2015 be granted pending the hearing and determination of the appeal herein.
4. **THAT** costs of this application be granted.

The application is supported by the grounds set out hereunder and the annexed affidavit of Rose L. Wile Wafula and grounds therein. The submissions are briefly that the 1st respondent was granted sugarcane proceeds in respect of sugarcane delivered vide permit no. 130980 and may proceed any time from now to request payment from the 2nd respondent. If a stay is not granted the applicant shall suffer substantial loss as the sugarcane proceeds held by the 2nd respondent vide permit No. 130980 shall be paid to the 1st respondent which amount the applicant will not be in a position to recover. The applicant shall further be condemned to pay the costs of Butali SRMCC 132/2015 while this appeal has high chances of success. This appeal has been brought within reasonable time and the applicant is willing to abide by any conditions and terms the court may impose as to security for grant of stay of execution of decree herein.

The respondent's in reply stated that the application has been overtaken by events as they have already been paid the proceeds of the said sugarcane. The appeal has also been filed in the wrong court as the issues herein are not about ownership of the land but the proceeds therein and this court has no jurisdiction.

On the issue of jurisdiction of this court, Article 162(2)(b) and 165(3)(a) of the Constitution of Kenya 2010 and Section 13 of the Environment and Land Court Act, 2011 the jurisdiction of the Environment and Land Court is to determination of disputes relating to environment planning and protection, climate issues, land use planning, title, tenure, boundaries, rates, rents, evaluations, mining, minerals and other natural resources, compulsory acquisition of land, land administration and management, public, private and community land and contracts, choses in action or other instruments granting any enforceable interests in land and any other dispute relating to environment and land. I wish to refer to the case of John Kimani Njenga v Margaret Wanjiru Kanyiri & others ELC No. 345 Of 2014 where it was held that the ELC Court had jurisdiction to hear and determine disputes, actions and proceedings concerning land. Indeed Section 105 of the Land Act provides as follows;

“The Environment and land Court established under the Environment and land Court Act is vested with the exclusive jurisdiction to hear and determine disputes, actions and proceedings concerning land under this Act”

The jurisdiction of the Environment of Land Court is set out in section 13 of Act No. 19 of 2011. By Section 13 (2) (a) dispute relating to “trade” are included. The lease agreement herein concerned land. The Land Act 2012 is the sole province of the Environment Court. Any matter dealing with land therefore comes under this court.

This court has considered both the applicant’s and the respondent’s submissions. The submissions are briefly that the 1st respondent was granted sugarcane proceeds in respect of sugarcane delivered vide permit no. 130980 and may proceed any time from now to request payment from the 2nd respondent. If a stay is not granted the applicant shall suffer substantial loss as the sugarcane proceeds held by the 2nd respondent vide permit No. 130980 shall be paid to the 1st respondent which amount the applicant will not be in a position to recover. I find that over five months have passed since the decree was issued and there has been undue delay. The claim is ultimately a liquidated one being the proceeds from the land and hence the applicant could recover the same from the 1st respondent should the appeal be successful. For these reasons I find the application is not merited and I dismiss it with costs.

Orders accordingly.

DELIVERED, DATED AND SIGNED AT KAKAMEGA IN OPEN COURT THIS 18TH DAY OF JULY 2017.

N.A. MATHEKA

JUDGE