

REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MOMBASA

ELC CIVIL SUIT NO. 208 OF 2013

BAKARI SHEBAN & 39 OTHERS.....PLAINTIFFS

-VERSUS-

SAID BIN RASHID KHAMIS ELMANDRI.....DEFENDANT

RULING

1. The plaintiffs being unhappy with the judgement made by this Court on 26.5.2015 lodged an appeal on 16th June 2015. They also filed the present application dated 15.06.2015. In the motion, they have urged the Court to order a stay of execution of the decree as if the same is not granted their appeal will be rendered nugatory.
2. The Applicants also stated that they are ready and willing to comply with any orders imposed. The application is supported by the affidavit sworn by Bakari Shaban. The applicant avers that if the orders are not granted, they will be rendered homeless.
3. The Respondent in opposing the application deposes the Applicants have no arguable appeal and that they are in illegal occupation of the Defendant's parcel of land. The Respondent deposes if the stay is granted it will further the illegality and deprive the Respondent their property. The Respondent prayed for the dismissal of the motion.
4. The advocates on record elected to argue the application by filing written submissions. The Applicants reiterated the grounds set out in the face of the motion. The Defendants/Respondents submitted on the provisions submitted on the provisions of Order 42 rule 6 (2) and argued that the applicants do not merit the orders sought.
5. I have considered the submissions rendered and the provisions of Order 42 rule 6. This Court is required to grant an order for stay once the Applicant has demonstrated they have an arguable appeal. Secondly that if stay is not given, they will suffer substantial loss. The applicants lodged a notice of appeal on 16th June 2015. The applicants are living on the land. If the orders of stay is not granted, they shall be evicted.
6. In the event they are evicted while the appeal is pending, they shall incur loss as their livelihood would be taken away. This in my opinion amount to substantial loss and thus deserves the grant of stay. Further pursuing an appeal is a right provided for in our constitution. There is no reason presented to this Court to deny the Applicant the opportunity to exercise that right.
7. I take cognizance of the fact that the defendants are being denied an opportunity to utilize the land as per their plan. To this extent, I do grant the Applicant a conditional stay that unless the Applicants files and serve the record of appeal within sixty days the stay granted shall lapse. This condition will help fast-track the determination of the appeal so that the party found entitled to the land can stay in peace.
8. The application is therefore allowed with no order on costs but on condition set out in paragraph 7 above.

Ruling dated and delivered at Mombasa on this 11th day of March 2016

A. OMOLLO

JUDGE