

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT ELDORET

PETITION NO. 2 OF 2015

DIOCESE OF ELDORET TRUSTEES (REGISTERED).....PETITIONER

VERSUS

NATIONAL LAND COMMISSION.....1ST RESPONDENT

TRUSTEES OF KIPLOMBE KAPTICH SCHOOL.....2ND RESPONDENT

LAND REGISTRAR, UASIN GISHU COUNTY.....3RD RESPONDENT

RULING

The Diocese of Eldoret Trustees (Registered) has come to court for a stay of execution of this court's decision and judgment made on 1st April, 2016 barring the respondents from revoking the Petitioner's Title Number Kiplombe/Kiplombe Block 5 (Kaptich) 70 and registering the same in the name of the Principal Secretary, Ministry of Education pending the hearing and the disposal of the intended appeal in this Petition at the Court of Appeal as the execution thereof will occasion a substantial loss to the Petitioner. That security be given as to the due execution of the Decree of this court by this Honourable Court.

The application is based on grounds that the Petitioner stands to suffer a substantial loss if the registration of particulars of Kiplombe/Kiplombe block 5(Kaptich) 70 are changed from the names of the Petitioner to the Principal Secretary, Ministry of Education and that the loss to be suffered is that the title of the said parcel of land will be changed and therefore the appeal will be rendered nugatory. This formal application has been brought without undue delay as the informal order of stay was made on 1st April, 2016. The Petitioner is prepared to provide security as ordered by the court.

The application is supported by the affidavit of the Most Reverend Bishop Cornelius Kiprono Korir who states that the Petitioner is not satisfied with the portion of that judgment and intends to appeal to the Court of Appeal for Kenya against the said holding and finding of this court. That he has already lodged the Notice of Appeal against the said judgment. That when the judgment was delivered on 1st April, 2016, he secured a stay of execution for a period of seven days which was granted to enable him file a formal application for stay of execution. That if the judgment of this court is implemented, the Petitioner will suffer a substantial loss as the title to Kiplombe/Kiplombe Block 5 (Kaptich) 70 will be materially affected as the registration thereof will have moved to the Principal Secretary, Ministry of Education. That if the change of particulars of registration as envisaged will be executed the Petitioner will have lost its title to the said land and the appeal will be rendered nugatory.

The application is opposed vide a replying affidavit of James Kisorio who states that the petitioner's application lacks merit, is frivolous, vexatious, an abuse of the court process and is fit for dismissal with costs. That the orders sought by the petitioner are greatly injurious to the 2nd respondent and should the same be granted, the development projects initiated by the 2nd respondent for the benefit of the entire community will be put to great peril.

This application is a deliberate scheme crafted by the applicant to delay the due execution of this honourable court's judgment and or decree. They are advised by their advocates on record which advice they verily believe to be true that the intended appeal lacks merit. The intended appeal is calculated to

delay the long overdue justice to the 2nd respondent and the entire Kaptich community at large. The petitioner's selfish interests should not be allowed to override genuine community interests over the suit parcel of land. They are informed by their advocate on record which advice they verily believe to be true that the applicant has not met the threshold required by law to be granted the orders sought. Should the orders sought herein be granted, the 2nd respondent shall continue to suffer for no apparent reason.

That it is in the interests of justice and fairness that the application herein be dismissed with costs and that the intended appeal is brought in utmost bad faith.

The 3rd respondent has filed grounds of opposition stating that the petitioner will not suffer any substantial loss if the title to the suit land is revoked and registered in the name of the Principal Secretary, Ministry of Education as registration can easily be undue if the petitioner succeeds on appeal.

The 4th respondent argues that a stay of execution will prejudice the interest of the Government.

I have considered the application and the response by the respondents and do find that the application has been filed timeously and this being a public interest matter, I do order in the interest of justice that there be stay of execution of the decision of the court made on 1.4.2016 and that both parties are hereby restrained from utilizing the parcel of land in any manner whatsoever until determination of the intended appeal or until it is ordered otherwise.

DATED AND DELIVERED AT ELDORET THIS 29TH DAY OF APRIL, 2016.

ANTONY OMBWAYO

JUDGE