



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 103 OF 2010**

**MARGARET NAMALWA LUSWETI.....PLAINTIFF**

**VERSUS**

**NGORONGANG PSENGO LONGOLEMUK ..DEFENDANT**

**R U L I N G**

1. The Applicant **Ngoronyang Psengo Longolemuk** filed a Notice of Motion dated 25/7/2014 in which he seeks an order of Stay of execution of the Decree herein pending the hearing and determination of an Appeal he has preferred to the Court of Appeal. The Applicant is the Defendant in this case.
2. The Respondent who is the Plaintiff in this case had sued the Applicant seeking an order of cancellation of **Title No. Kwanza/Kwanza Block 4/Korosi /148** and registration of the same in the Respondent's name in trust for herself and her two sisters.
3. The title to **Kwanza/Kwanza Block 4/Korosi/148** is in the name of the Applicant but in a Judgement delivered on 21/5/2014, the court ordered its cancellation on the ground that it was obtained unlawfully.
4. The Applicant contends that if the title is cancelled as ordered by the court, this will prejudice him and render the appeal nugatory. The Applicant further contends that he has been in possession of the suitland since 2004.
5. The application is opposed by the Respondent through replying affidavit sworn on 15/10/2015. The Respondent contends that the Applicant will not be prejudiced in any way if stay is not granted. That the land is there and that even if he succeeds in his appeal, the land will revert to him. That the Applicant has belatedly prosecuted his application because he is enjoying the land and that stay should be denied so that the Respondent can execute the decree.
6. I have carefully considered the Applicant's application as well as the opposition thereto by the Respondent. This is an application for stay pending appeal. The conditions for grant of stay are provided for under **Order 42 Rule 6** of the Civil procedure Rules. I now have to consider whether the Applicant has satisfied the same.
7. The impugned Judgement was delivered on 21/5/2014. The application for stay was filed on 25/7/2014. This is a period of over two months. I do not find that a delay of two months is unreasonable. I now move on to consider whether the Applicant will suffer substantial loss if stay is not granted. The Applicant was the Defendant in this suit. The Respondent had prayed for an order of registration in her name on behalf of herself and her two sisters.

8. The court issued an order of cancellation of title but did not give an order for registration of the land in the Respondent's name. The Applicant is the one in possession of the land. There was no order of eviction. There was no order that the land be registered in the name of the Respondent. What loss will the Applicant suffer in the circumstances?

I do not think that there will be any loss suffered if stay is not granted. In case the title is cancelled and the Applicant later succeeds in his appeal, the title will be restored. I do not see how cancellation of title will render the appeal nugatory. I therefore find that there will be no substantial loss suffered if stay is rejected.

9. The issue of security which is another condition under **Order 42 Rule 6 of the Civil Procedure Rules** is usually considered if there is demonstration of substantial loss.

I therefore find that the Applicant's application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

**Dated, signed and delivered at Kitale on this 18th day of April, 2016.**

**E. OBAGA**

**JUDGE**

In the presence of M/s Mufutu for Mr Kiarie for Applicant.

Court Assistant: Isabellah

**E. OBAGA**

**JUDGE**

**18/4/16**