



REPUBLIC OF KENYA

IN THE ENVIRONMENT NAD LAND COURT AT KITALE

LAND CASE APPEAL NO. 1 OF 2016

(Being An Appeal From The Ruling Of Kitale Delivered On 17/4/2013 In Land Case No. 520 Of 2002 By Hon. S. K. Ngetich Ag Senior Resident Magistrate)

WILLIAM ANYENDAPLAINTIFF

VER SUS

ENOCK BULIMO AND OTHERS.....DEFENDANTS

R U L I N G

1. The Applicant **William Anyenda** filed a Notice of Motion dated 19/11/2013 in which he seeks stay of execution pending appeal. The Applicant is the Appellant in the appeal filed herein. The Applicant is appealing against the ruling of **Hon. S.K. Ngetich Ag Senior Resident Magistrate** which was delivered on 17/4/2013.
2. The Respondents had purchased land of various sizes from the Applicant. The Applicant delayed in carrying out subdivision so as to transfer the land to the purchasers. The Respondents went before the Land Disputes Tribunal where they filed a claim against the Applicant. The dispute was heard and the Tribunal ruled in favour of the Respondents. The verdict of the Tribunal was adopted as Judgement of the court on 5/11/2002.
3. The Respondents came to court in 2013 seeking to execute the decree. Their application was allowed prompting the Applicant to file an appeal against the said ruling. The Applicant contends that the Respondents have engaged a surveyor who is about to go to the land and hive off about 50 acres of his land. He therefore argues that if this is done, he will suffer substantial loss as the said transactions did not get the consent of the Land Control Board and as such any execution based on the agreements is unlfawful.
4. The application is opposed based on the replying affidavit of **Jane Odanga** sworn on 5/5/2014. The Respondent contends that she and other Respondents bought land from the Applicant in early 2000. The Respondents were put in possession . They later wanted their boundaries ascertained with a view to getting their titles. The Applicant declined to accept a surveyor to come and ascertain the boundaries. The Respondents were forced to file a claim at the Land Disputes Tribunal. The Tribunal ruled in their favour.
5. The Applicant was dissatisfied with the Tribunal decision. He moved to the High court and filed an application for Judicial review seeking to quash the decision of the Tribunal. The application for Judicial Review was later dismissed for want of prosecution. As there was nothing staying the execution of the decree from the Tribunal, they moved to court seeking orders that the Executive officer of the court do sign transfer documents on behalf of the Applicant. This

application was allowed. The Respondents therefore argue that the Applicant's application lacks merit and the same ought to be dismissed with costs.

6. This is an application for stay of execution pending appeal. It is brought under the provisions of **Order 42 Rule 6** of the **Civil Procedure Rules**. Under the said rule an Applicant must meet the conditions set therein before stay of execution pending appeal can be granted. The first condition is that such an application must be brought without unreasonable delay. The ruling being appealed against was delivered on 17/4/2013. The present application was filed on 19/11/2013. This application was filed over seven months later. The delay of over seven months is not explained. I find that a delay of over seven months is unreasonable in the circumstances.
7. The second condition is that the Applicant must demonstrate that he will suffer substantial loss. In the instant case, I do not see what loss the Applicant will suffer. He sold various sizes of land to different persons. He was fully paid and put the purchasers in possession. He is now refusing to transfer the portions to the purchasers. What loss will be suffered if land is transferred to the purchasers? I do not think that he will suffer any loss.
8. The Applicant is seeking to fault the agreements which he argues never received the consent of the Land Control Board. This may be so but is that the issue which was before the trial magistrate? The answer is simply no. The Applicant lost a chance to argue his case when the Judicial review application was dismissed for want of prosecution. The Respondents were free to approach the court to assist them execute the decree. This is the application which was before the trial court which the trial court allowed.
9. An appeal has been preferred to this court. Apart from the court considering the conditions under **Order 42 Rule 6**, it is also in order for the court to consider if the appeal is arguable as this is a court to which an appeal has been preferred. I do not find any arguable ground in the appeal before this court. I do not wish to give the reasons because that will amount to prejudging the appeal itself.

In short, I do not find any merit in the Applicant's application. The same is hereby dismissed with costs to the Respondents.

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 Kaosa for Respondent.

Court Assistant: Isabellah

E. OBAGA

JUDGE

18/4/16