



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT**

**AT MALINDI**

**ELC CIVIL CASE NO.20 OF 2016**

**COQUERO LIMITED.....PLAINTIFF**

**=VERSUS=**

**BRUCE JOSEPH BOCKLE.....DEFENDANT**

**RULING**

1. What is before me is the Application by the Defendant dated 18<sup>th</sup> January, 2016. In the Application, the Defendant/Applicant is seeking for the following orders:

**(a) THAT pending the interpartes hearing and determination of the intended appeal to the Court of Appeal, the Honourable Court be pleased to grant an order staying the execution of the orders of 8<sup>th</sup> December, 2015 and the warrants of eviction dated 30<sup>th</sup> December 2015 commanding the Court Bailiff to oversee the demolition of buildings belonging to the Defendant standing on sub division No.491 (original number 490/1) Section IV, Kikambala, Kilifi County and the eviction of the Defendant therefrom.**

**(b) THAT in the alternative to (3) above, pending the filing and interpartes hearing and determination of an intended application for stay of execution at the court of appeal, the Honourable Court be pleased to grant an order staying the execution of the orders of 8<sup>th</sup> December, 2015 and the Warrants of Eviction dated 30<sup>th</sup> December 2015 commanding the Court Bailiff to oversee the demolition of buildings belonging to the Defendant standing on sub-division No.491 (original Number 490/1) Section IV, Kikambala, Kilifi County and the eviction of the Defendant therefrom.**

**(c) THAT the cost of this application be provided for.**

2. The Application is premised on the grounds that the Judgment of the Court dated 14<sup>th</sup> March, 2013 did not decree that the Defendant was to be evicted or to give vacant possession of the suit property; that by a Ruling dated 8<sup>th</sup> December, 2015 Omollo J introduced an order to the effect that the Defendant was to be forcefully evicted from the suit property and that pursuant to the order of the court, the Deputy Registrar has proceeded to sign the warrants of eviction.

3. It is the Applicant's case that the learned Judge and Deputy Registrar acted unlawfully and that the Defendant has appealed against the said decisions.

4. According to the Defendant, the National Land Commission has directed that the issue relating to the

suit property be stayed awaiting the outcome of the ongoing investigations.

5. In its Grounds of Opposition, the Plaintiff/Respondent averred that since 14<sup>th</sup> March, 2013, the Applicant has disobeyed and continues to disobey the decree dated 25<sup>th</sup> September, 2013; that the Application is merely intended to further deny the Respondent from enjoying the fruits of his Judgment and that the Application does not meet the requirements envisaged under Order 42 Rule 6(2) of the Civil Procedure Rules, 2010.

6. The Defendant's/Applicant's counsel submitted that Order 42 Rule 6 (2) of the Civil Procedure Rules only requires the court to be satisfied of the existence of three factors, namely: substantial loss may result; there is no unreasonable delay and security for due performance of the decree has been given.

7. Counsel submitted that being dispossessed of one's property without being given an opportunity to fully defend the right to own property is substantial loss and that the Plaintiff's parents lived on the property and that when they died, they were buried on the land.

8. According to the Defendant's counsel, the Defendant lives on the suit property with his family and has also constructed several permanent structures on the land.

9. Counsel submitted that the Application was filed without unreasonable delay and that the suit property being land, no security is required.

10. The Plaintiff's advocate submitted that the court has already pronounced on the rights of the parties in relation to the suit property and that sentimental attachments to land cannot be a ground for grant of stay.

11. It is not in dispute that on 27<sup>th</sup> February, 2013, Tuiyot J entered Judgment in favour of the Plaintiff. In the Judgment, the court issued a mandatory injunction requiring the Defendant to pull down and remove from the suit property the "construction and remove all his property of whatever nature."

12. In the said Judgment, the court also restrained the Defendant from remaining on the suit property.

13. The Defendant filed an Appeal against the said Judgment which appeal was dismissed by the Court of Appeal.

14. The Plaintiff then filed an Application seeking for the orders of the court to execute the decree of 25<sup>th</sup> September, 2013 before taxation and for an order of eviction in the enforcement of the Judgment of the court.

15. In her Ruling, Omollo J allowed the Application dated 8<sup>th</sup> April, 2015 in the following words:-

**(i) The Plaintiff be and is hereby allowed to execute the decree dated 25<sup>th</sup> September, 2013 against the Defendant before taxation of costs.**

**(ii) The Officer in charge of the nearest police station the ensure law and order is maintained during the eviction exercise.**

**(iii) The cost of the Application is awarded to the Applicant.**

16. The Defendant has appealed against the said Ruling.

17. The Defendant is seeking for a stay of execution pending the hearing of the Intended Appeal.

18. According to the Defendant, unless the order of stay is granted, he will suffer substantial loss because he has put up permanent structures on the suit land.

19. It is true, as submitted by the Defendant's counsel, that where a party shows that he will suffer substantial loss unless an order or decree is stayed pending the hearing and determination of an appeal, then an order of stay should be granted by the trial court.

20. The issue that the Defendant intends to escalate to the Court of Appeal is not whether he is entitled to the suit property.

21. In fact, the issue as to who is entitled to the suit property has been determined by the High Court and the Court of Appeal.

22. All that the Plaintiff did was to file an Application to execute the decree of the High Court, which was confirmed by the Court of Appeal, before taxation.

23. Both the High Court and the Court of Appeal having decreed that the suit property belongs to the Plaintiff, and that the Defendant should demolish the buildings on the land, there is no substantial loss that the Defendant will suffer having been divested of the land by the two courts.

24. Indeed, the Defendant does not have a property in the first place and the question of suffering substantial loss does not arise.

25. What the Defendant is doing is actually using the court process to subvert the very court that ordered him to vacate the suit property.

26. Considering that the Defendant was ordered by the court to demolish the buildings on the suit land and was restrained from entering the said land, the continued staying on the land is in itself in contempt of the orders of the court. This court will be assisting the Defendant to continue disobeying the orders of the court, which order was upheld by the Court of Appeal.

27. In the circumstances, the order of stay cannot be granted. Instead, the Defendant should abide by the decree of the court immediately and if not execution to issue as decreed.

28. For those reasons, I dismiss the Application dated 18<sup>th</sup> January, 2016 with costs

Dated, signed and delivered in Malindi this 22<sup>nd</sup> day of **September**, 2016.

**O. A. Angote**

**Judge**