

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

LAND CASE NO. 151 OF 2015

MARY JUSTER CHEPLETINGPLAINTIFF

VERSUS

AGRICULTURAL FINANCE CORPORATION.....DEFENDANT

REASONS FOR RULING

1. On **9/9/2016**, I made an order dismissing the applicant's notice of motion dated **6/9/2016** and reserved the reasons for dismissal to a later date. The applicant had taken a loan from the Agricultural Finance Corporation (AFC) in two occasions. The first loan of **Kshs.10,100,000/=** was taken on or about **5/6/1996**. The second loan of **Kshs.5,893,650/=** was taken on or about **14/3/1997**.

2. The applicant never repaid the loan as agreed. She has been battling AFC in court in various cases. At some stage the applicant pleaded with AFC to allow her sell half of her **305 acre** parcel of land to repay the loan but she did not do as promised. When AFC advertised the charged property for sale, the applicant filed the present suit in which she also filed an application for injunction. The application for injunction was fully heard and in a ruling delivered on **12/8/2016**, the application was dismissed with costs to AFC.

3. The applicant filed a notice of appeal against the ruling after which she came to court for stay of execution pending appeal against the ruling delivered on 12/8/2016. The applicant's application is based on **Order 42 Rule (6) of the Civil Procedure Rules**. There are three conditions which have to be met before stay can be granted. Firstly the application has to be made without unreasonable delay. Secondly, there must be demonstration of substantial loss. Thirdly there has to be such security as the court orders for the due performance of such decree as may ultimately be binding on the applicant.

4. In the instant case, ruling was delivered on 12/8/2016. The present application was filed on 6/9/2016. The explanation for the delay was that the applicant could not access the court file which remained in the judge's chamber after ruling had been delivered. I do not find any merit in this excuse. Files ordinarily go back to the registry soon after ruling is read. However be that as it may, I do not find that the delay in bringing this application is unreasonable.

5. Demonstration of substantial loss is the cornerstone for an application for stay pending appeal. The applicant in this case has not demonstrated that she will suffer substantial loss. She does not deny that she took a loan from AFC. At some stage, she pleaded with the AFC to let her sell half of the charged property to repay the loan. She never did this. All that she is interested in is delaying the realization of the security. The applicant is still maintaining that she was not served with the required statutory notice and that she is still willing to sell half of the charged property to repay the loan. Her contentions cannot be raised in application of this nature.

6. The applicant was expected to demonstrate that she will suffer substantial loss if stay is not granted. She has not demonstrated that. All she says is that that is her only property. With due respect, this is not demonstration of substantial loss. It is clear that the applicant is out to use the court system to shield her from meeting her obligations. The loan which she took has been outstanding for almost two decades.

7. The issue of security is considered if there is demonstration of substantial loss. No substantial loss has been demonstrated. These are the reasons which made me dismiss the applicant's notice of motion dated 6/9/2016.

Dated, signed and delivered at Kitale on this 6th day of **October, 2016**.

E. OBAGA

JUDGE

COURT

Ruling signed in court at 2.33 pm in the absence of parties who were aware of the date and time of delivery of ruling. Let the file be taken back to Eldoret.

Court Assistant - Isabellah.

E. OBAGA

JUDGE

6/10/2016