



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.70 OF 2009

NELSON KAZUNGU CHAI

LAWRENCE KAZANI GOHU

WYCLIFFE TEMBO MWANGOME

SAID HASSAN HEMED

IBRAHIM ABDI

FESTUS MWARERE LENGA

KENGA KILUMO CHARI

LEONNOX MKUTANO NGALA

SHADRACK NDHULI

PRUDENCE MAPENZI MWANGORI *suing on their behalf and on behalf of 298 others*.....PLAINTIFFS/APPLICANTS

=VERSUS=

PWANI UNIVERSITY.....DEFENDANT/RESPONDENT

RULING

1. On 31st October 2014, I ordered that the 308 Plaintiffs and any other trespassers on the Defendant's land should be evicted.
2. The Plaintiffs have filed an Application dated 28th November 2014 in which they are seeking for an order of stay of execution of the Judgment dated 31st October 2014 pending the hearing and determination of the Intended Appeal.
3. The Application is premised on the grounds that unless the orders of stay of execution are granted, the Applicants and their families will be rendered destitutes given that the developments on the suit premises constitute their houses and dwellings in which they have invested “immense heart, soul and finance”.
4. The Applicants have deponed that the Memorandum of Appeal raises several arguable grounds of Appeal.

5. In its Replying Affidavit, the Defendant, through its Vice-Chancellor, deponed that for a period of about 10 years, the Plaintiffs have denied the Defendant the use of its land by illegally occupying the land and that the Plaintiffs have not demonstrated that they have an arguable appeal; that the deponent of the Supporting Affidavit does not stay on the suit land and that the Defendant was hoping to construct a school of medicine, teaching and referral hospital and other developments on the suit land which it has not done due to the pendency of the suit.
6. The parties' advocates filed written submissions which they highlighted. I have considered those submissions together with the authorities.
7. The law relating to the grant of an order of stay of execution pending the hearing and determination of an appeal is provided for under Order 42 Rule 6(2) of the Civil Procedure Rules.
8. Order 42 Rule 6(2) of the Civil Procedure Rules provides that no order for stay of execution shall be made by the trial court unless: the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and such security as the court orders for the due performance of such decree or order as may ultimately be binding to him has been given by the applicant.
9. The trial court is not supposed to determine whether the Applicants have an arguable appeal or whether their appeal will be rendered nugatory if the stay orders are not granted.
10. This is a representative suit involving more than 300 families. Most of those families have put up residential buildings, both permanent and temporary in nature, on the suit property.
11. The Judgment of this court is meant to have the buildings in the suit property demolished to pave way for the development of the suit property by the Defendant, a fact admitted by the Defendant.
12. Considering that the Plaintiffs have put up buildings on the suit properties, they shall suffer substantial financial loss in the event the said buildings are demolished before the intended appeal is heard and determined.
13. In the circumstances, I find and hold that the Plaintiff shall suffer substantial loss if the order of stay pending appeal is not granted.
14. The current Application was filed on 28th November 2014, which was one month after the delivery of the Judgment of this court. There was therefore no unreasonable delay in filing the Application.
15. In view of the fact that both the Plaintiff and the Defendant are claiming to own the suit land, which is an immovable asset, the Plaintiffs do not need to give any security for the due performance of the decree.
16. For those reasons, I allow the Plaintiffs' Application dated 28th November 2014 as prayed.

Dated and Delivered in Malindi this 13th day of **March**, 2015

O. A. Angote

Judge