

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 18 OF 2014

1. MNANG'AT STEPHEN PAMBA
2. SALOME CHEPKEMEI LOSIANGOLE ::::::: PLAINTIFFS

VERSUS

1. JAMES MARIACH KOKITA
2. VERONICA C. AKOKOR ::::::::::::::: DEFENDANTS

RULING

1. The applicant filed an application dated 23/6/2014 seeking stay of execution of the court's ruling of 3/6/2014 pending hearing and determination of an appeal filed against the same in the court of Appeal. The application is supported by the supporting affidavit of her Advocate George Stephen Nyakundi sworn on 23/6/2014.
2. The applicant contends that she has preferred an appeal against the court's ruling of 3/6/2014 and that, the appeal has high chances of success and that if stay is not granted she will suffer prejudice as she is the registered owner of LR No. West Pokot/Keringet "A"/4050.
3. The applicant's application is opposed through a replying affidavit sworn by the first respondent on 19/9/2014 and filed in court on the same day. The respondents contend that the applicant's application is misconceived and the orders sought cannot be granted. They contend that there is nothing capable of being executed and that allowing the application will be like allowing the appeal itself.
4. The ruling being sought to be stayed is a ruling granting the respondents an injunction against the applicant and her husband from interfering with two acres which they had sold to the respondents. The applicant and her husband had sold two acres to the respondents who paid the full purchase price. The respondents were put in possession but the applicants later changed their minds and purported to refund the purchase price. The respondents then filed an application for injunction seeking to restrain the applicants from interfering with the two acres sold to them pending hearing and determination of the suit. The injunction was granted. It is this injunction which they seek to stay.
5. Under Order 42 of the Civil Procedure Rules, stay of execution cannot be granted unless the court is satisfied that first the application has been brought without unreasonable delay. Secondly that the applicant will suffer substantial loss if stay is not granted. Thirdly, there should be such security as the court orders for the due performance of the decree or order as may ultimately be binding upon the applicant. In the instant case the ruling being appealed against was delivered on 3/6/2014. The current application was made on 23/6/2014. The application was therefore brought without unreasonable delay.
6. Has the applicant demonstrated that she will suffer substantial loss if the stay is not granted? I do not think the applicant will suffer any loss if stay is not granted. She has not demonstrated how failure to grant stay will prejudice her as she claims. There is nothing to be executed in the order. She is still holding the respondents money and she cannot seek to have the land at the same time. The order for security is only considered if the applicant has demonstrated that she will suffer substantial loss if stay is not granted. She is free to move on with her appeal against the ruling of

3/6/2014. I find that her application cannot be allowed. The same is hereby dismissed with costs to the respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this 5th day of March, 2015.

E. OBAGA

JUDGE

In the Presence of Mr Nyakundi for applicant and Mr Ingosi for respondent. Court Clerk – Kassachoo.

E. OBAGA

JUDGE

5/3/2015