



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL APPEAL NO. 48 OF 2010

MPENZWE NGOBA MTANA

BIJUMA NGOBA MTANA (*suing as the administrators/Legal representatives*
*of the estate of the late DON MAURICE MUTANA.....***APPELLANTS**

=VERSUS=

ZUHURA SHABAN.....RESPONDENT

R U L I N G

Introduction:

1. The Application before me is dated 26th August, 2014 filed by the Appellants. In the application, the Appellants are seeking for the following orders:

(a) That this Honourable court be pleased to grant an order for stay of execution of the Ruling and the Order in this suit pending the hearing of the intended appeal filed at the court of appeal.

(b) That the costs of this Application be provided for.

The Appellant's/Applicant's case:

2. The Appellants' Application is based on the grounds that this court delivered a Ruling dismissing the Applicants' Application dated 3rd April 2014 on 31st July 2014; that the Applicants wish to exercise their right of appeal and that the court ought to order a stay of execution of the Ruling pending the hearing of the Appeal.

The Respondent's case:

3. The Respondent filed Grounds of Opposition in which it was deponed that the Appellants have not complied with the provisions of Order 42 Rule 6(2) (a) and (b) of the Civil Procedure Rules; that the intended appeal has no chances of success and that the Application should be dismissed with costs.

Submissions:

4. The Appellants' counsel submitted that the Applicants have approached the court without any delay; that the Applicants together with their family have resided on the suit property for all their lives and that over 50 persons depend on the land in dispute.

5. The Respondent's counsel submitted that the appeal has no chances of success and that the Applicants are misleading the court by stating that they are living on the land.

6. Counsel submitted that if the stay is to be granted, the Appellants should be ordered to deposit in court Kshs.1,000,000.

Analysis and findings:

7. On 28th March 2014, this court dismissed the Appellants' Appeal. The Appellant then filed an Application seeking to review the Judgment of the court. The court dismissed the Application on 31st July, 2014.

8. Order 42 Rule 6(2) of the Civil Procedure Rules provides that no order of stay of execution shall be made unless the court is satisfied that substantial loss may result to the Applicant unless the order for is made and that the Application has been made without unreasonable delay. The court may also order for security for the due performance of the decree or order.

9. The Notice of Appeal by the Applicants is in respect to an Application for review which this court dismissed. There was no positive order in that Ruling that can be stayed.

10. The Ruling of 31st July 2014, which is the subject of appeal, did not order for the eviction of the Appellants. It does not therefore matter that indeed the Appellants are staying on the suit property as alleged.

11. Even if I stay the Ruling of 31st July, 2014, the Appellants will still be evicted if the Respondent has an order from the Land Disputes Tribunal or the Magistrate's court to evict them.

12. The prayer for an order staying the Ruling of 31st July 2014 will be in vain considering what I have stated above. It is trite law that the court does not issue orders in vain

13. For those reasons, I dismiss the Application dated 26th August 2014 with costs.

Dated and delivered in Malindi this **3rd** day of **July** 2015.

O. A. Angote

Judge