



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO.34 OF 2014

(formally CMCC No. 364 of 2010)

1. FRANCIS K. BAYA

2. JOSEPH KIRINGI

3. CLEMENTINA MAPENZI (*suing on their behalf of Chairman, Secretary and Treasurer*

*respectively as officials and on behalf of members of Rainbow Community Care Kibokoni.....***PLAINTIFFS**

=VERSUS=

1. SAMMY MUTILE

2. DENISE KINOTTE MTILE.....DEFENDANTS/APPLICANTS

RULING

1. On 12th June 2015, this court entered Judgment in favour of the Plaintiffs. In the Judgment, the court ordered the Defendants to transfer the suit property to the Plaintiffs on the ground that the suit property was purchased by the Plaintiffs' organization.

2. The 1st Defendant has now filed an Application dated 19th June 2015 in which he is seeking for the following orders:

(a) That upon interpartes hearing, the stay of execution be confirmed pending hearing and determination of the Appeal.

(b) That the Honourable court to grant any other or further directions as it may deem fit and just to grant.

(c) That costs be provided for.

3. The Application is premised on the grounds that if the orders of this court are executed, the Applicant will suffer great prejudice and substantial loss; that the appeal will be rendered nugatory and that the Applicant has an arguable appeal.

4. In the Replying Affidavit, the 1st Plaintiff/Respondent deponed that the Defendant has not demonstrated how he will suffer substantial loss; that the Defendant/Applicant has not offered security and that damages can compensate the Defendant in the event he succeeds in the intended appeal.

5. I have considered the submissions on record.

6. Order 42 Rule 6(2) of the Civil Procedure Rules provides that for an order of stay of execution to be granted, the Applicant must satisfy the court that substantial loss may result to him unless the order is made and that the Application has been made without unreasonable delay.

7. The Applicant is also required to give such security as the court orders for the due performance of the decree.

8. The Defendant/Applicant has stated in his Supporting Affidavit that he is likely to suffer substantial loss unless the order of stay is granted because the Plaintiff might sell the suit property to third parties.

9. The Defendant/Applicant does not live on the suit property. Indeed, it is the Plaintiffs that have been in occupation of the suit property since the property was purchased.

10. Considering that the Plaintiffs have built on the suit property an orphanage home, a school and a clinic, it cannot lie in the mouth of the Defendant to say that the Plaintiffs may sell the property to third parties.

11. Indeed, it is the Defendants who are likely to dispose of the suit property if the two title deeds remain in their joint names.

12. Having not satisfactorily demonstrated the substantial loss that he shall suffer, and in view of the fact that the Plaintiffs are running a charitable organization on the suit property, I find and hold that the Application dated 19th June, 2015 is unmeritorious.

13. For those reasons, I dismiss the Application dated 19th June 2015 with costs.

Dated and delivered in Malindi this 30th day of **October** 2015.

O. A. Angote

Judge