



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 18 OF 2013

JOYCE CHEMAIYO BETT

JOHN KITILIT BETT PLAINTIFFS/RESPONDENTS

VERSUS

DENNIS WALTER BALA

TIMOTHY OLANDA BALA DEFENDANTS/APPLICANTS

JOSIAH OKIRI BALA

RULING

1. The first applicant filed a notice dated 22/6/2015 in which he seeks stay of execution pending appeal. The respondents had obtained a judgment in their favour on 21/5/2015. In that judgment, the applicant had been ordered to demolish some two bungalows which are standing on the property which was found to belong to the respondents.
2. The applicant contends that he has filed an appeal to the Court of Appeal against the said judgment and that if stay is not granted, the appeal will be rendered nugatory as he will already have suffered loss if the two buildings are brought down before the appeal is determined.
3. The applicant's application is opposed by the respondents who contend that the application lacks merits as it is only meant to deny them from enjoying the fruits of the judgments. They contend that the applicant has not demonstrated that he has an arguable case.
4. In response to the applicant's contention that there is no demonstration that there is an arguable appeal, the applicant argues that this point can only be taken in the court to which the appeal is filed and not the superior court from where the judgment was given.
5. The applicant's application has been brought under Order 42 Rule 6 of the Civil Procedure Rules. This rule set down conditions upon which stay of execution pending appeal can be granted. First the applicant has to demonstrate that he will suffer substantial loss if stay is not granted. Secondly the application has to be brought without unreasonable delay. Thirdly there should be such security as the court orders for the due performance of the decree as may ultimately be binding upon the applicant.
6. In the instant case, the judgment being appealed against was delivered on 21/5/2015. This application was filed 22/6/2015. This is a period of one month. I do not find the same to be unreasonable in the circumstances. On whether there is demonstration that there will be substantial loss, there is no contention that there are two bungalows which are standing on the suit

land. The same have been ordered demolished. Costs have already been taxed and decree extracted. If the two buildings are demolished before the appeal is determined, the applicant will suffer loss in the event that he succeeds in his appeal. I therefore find that the applicant has demonstrated that he will suffer substantial loss if stay of execution is not granted.

7. This is a case where the applicant is enjoying rental income from a property which was found to belong to the respondents. This is a clear case where security for costs is called for. I order that the applicant do provide costs of Kshs.200,000/= to be deposited in a joint interest earning account in the name of the advocates within 14 (fourteen) days from today. If this order is not complied with the stay granted will automatically lapse.

It is so ordered.

Dated, signed and delivered at Kitale on this **19th** day of **October, 2015.**

E. OBAGA

JUDGE

In the presence of Mr. Teti for Mr. Yano for Respondent and Mr. Onyancha for Applicant.

Court Assistant – Winnie.

E. OBAGA

JUDGE

19/10/15