



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT

AT MALINDI

ELC CIVIL CASE NO. 36 OF 2013

TEDDY DAVIS NGALA.....PLAINTIFF/RESPONDENT

=VERSUS=

POLA NGALA alias

POLA CHARO KANIKI.....DEFENDANT/APPLICANT

R U L I N G

Introduction:

1. What is before me is the Defendant's Application dated 18th July 2014 seeking for the following orders:
 - (a) That **there be a stay of judgment of this court passed against the applicant herein delivered on the 11th day of July 2014 pending the intended appeal which is in the process of being filed.**
 - (b) **That there be provision for the costs of the same.**
2. The Application is premised on the grounds that the judgment by this court was in favour of the Plaintiff awarding him three acres from the Defendant's parcel of land Kilifi/Mtondia/1893; that the Applicant/Defendant has filed an appeal against the said judgment and that unless the orders of stay is granted, the Applicant will be exposed to serious and irreparable loss that may not be reversed in the event the appeal succeeds.
3. The Applicant deponed in her affidavit that her intended appeal has high chances of success because the Plaintiff did not have the *locus standi* to file the suit and that there are several other points of law to be canvassed at the hearing of the appeal.
4. In brief reply, the Plaintiff/Respondent deponed that the Defendant's intention is to deny him the fruits of justice; that the Application for stay of execution is not genuine and that the allegations by the Applicant that he tried to bribe her advocate are defamatory and the Applicant and her advocate should be investigated.
5. The Applicant's advocate and the Respondent appeared before me on 8th September 2014 and made their oral submissions which I have considered.
6. The law relating to the stay of execution pending appeal is provided for under Order 42 Rule 6 (1) and (2) of the Civil Procedure Rules. The Applicant has to show that substantial loss may result unless the order is made and that the application has been made without unreasonable delay. The

- Applicant is also required to provide such security as the court may order for the due performance of the decree.
7. It is not in the province of this court to determine whether the Applicant's intended appeal has high chances of success or not.
 8. The Applicant in this matter is in possession of the suit property and the title document.
 9. In my judgment, I directed the Kilifi County Surveyor to survey and curve out three acres of land out of parcel of land number Kilifi/Mtondia 1893 and the said three (3) acres of land to be registered in favour of the Plaintiff/Respondent.
 10. The sub-division of the land pursuant to my judgment will change the nature of the land. The three acres will also be out of reach of the Defendant/Applicant once the same is curved out and registered in favour of the Applicant. The Defendant is likely to suffer substantial loss in the event that her intended appeal succeeds because the Respondent will deal with the three acres in any manner he deems fit, including selling the land.
 11. This Application was filed within ten days from the date of my judgment. In my view, a delay of ten days, including weekends, cannot be said to be unreasonable.
 12. The suit property herein is security in itself. However, to forestall any attempt by the Defendant/Applicant to sell the land before the appeal is heard and determined, the original title deed in respect to the suit property should be deposited in court.
 13. In the circumstances, I allow the Application dated 18th July 2014 in the following terms:

(a) There be a stay of execution of the Judgment of this court delivered on 11th July 2014 pending the hearing of the intended appeal.

(b) The above order is granted on condition that the Applicant deposits in court for safe custody the original title deed for Kilifi/Mtondia/1893 within fourteen (14) days from the date hereof pending the hearing and determination of the appeal.

(c) Each party to pay his/her own costs.

Dated and delivered in Malindi this 10th day of October, 2014.

O. A. Angote

Judge