



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: KARANJA, MUSINGA & MURGOR, J.J.A.)

NYERI CIVIL APPLICATION NO. 34 OF 2020

BETWEEN

JEREMIAH M'NJOGU.....APPLICANT

AND

DISTRICT LAND REGISTRAR MERU CENTRAL.....1ST RESPONDENT

CHAIRLAND CONTROL BOARD.....2ND RESPONDENT

MERU DISTRICT SURVEYOR.....2ND RESPONDENT

H.YOUNG (E.A) LTD.....INTERESTED PARTY

GEL VERSE MUTETHIA JOHN.....4TH RESPONDENT

MARTHA NAITORE M'MURITHI.....5TH RESPONDENT

EXECUTIVE OFFICER – MERU LAW COURTS.....6TH RESPONDENT

(An application for enforcement of execution of the Order from the Court of Appeal at Nyeri (J. N. Gachuhi, J.R.O. Masime & R. S. Omolo, J.J.A.) dated 17th May, 1991 and by the Ruling of the Environment and Land Court at Meru (L. Mbugua, J.) dated 12th February, 2020

in

Civil Application No. NRB 43 OF 1991 (NYR. 15/1990))

RULING OF THE COURT

1. **Jeremiah Njogu M'torugoji** is an old, indigent *pro se* litigant who has been in the court corridors since 1980's seeking justice in respect of **Land Parcel No. Ntima/Ntakira/685**. He says that an order in his favour was issued on 17th May, 1988 but the same remains unexecuted to date. In pursuit of enforcement of the said order, he has filed a multiplicity of suits before different courts, most of which have not seen the light of day. It was in regard to one of those suits that the learned Judge, Mbugua, J. expressed herself as follows:-

“I will now forcefully dismember the Gordian Knot which has chocked this file for decades by not only allowing the application dated 1st December, 2011 but by giving other directions geared towards bringing closure to this matter.

The learned Judge in a Ruling dated 12th February, 2020 dismissing the applicant's application noted that the matter had already been closed and advised the applicant to seek review in the main file, to wit, MERU HCCA No. 21 of 1990 and stop filing other satellite matters.”

2. Undeterred by the dismissal, and tacit warning to stop filing a proliferation of applications, the applicant moved to this Court vide a notice of motion pronounced to be premised on **Section 3A and 3B** of the **Appellate Jurisdiction Act** and **Article 159** of the **Constitution of Kenya, 2010**. His main prayer is seeking stay of execution of the “*decree given on 12th February, 2020 by Honourable Justice Lucy W.*

Mbugua pending intended appeal against the whole of the said judgment". In the body of the application he has given the history of his litigation in court, which in our view has no relevance to the application at hand. The same history is repeated in the applicant's lengthy affidavit in support of the application sworn on 3rd March, 2020. He deposes that he is aggrieved by the Ruling of the learned Judge in which his three applications namely

Meru Employment and Land Court Misc. Civil Applications No. 12 of 2019, No. 19 of 2016 and No. 5 of 2008 were dismissed. He faults the learned Judge for dismissing the application summarily.

3. There was no replying affidavit filed by the respondents but the 1st and 2nd respondents filed brief submissions through which they urged the Court to dismiss the application, saying that the applicant is an idle man

"who has lasted in court for over 30 years making numerous application (sic) that are never worthy the ink, money or judicial time." They urge the Court to dismiss the application as the applicant has not demonstrated what may happen in the event the application is not allowed.

4. We have considered the application in its entirety, the affidavit in support and the submissions by both parties. The Ruling giving rise to this application dismissed the applicant's application. The orders given in that Ruling were negative orders. This Court has time and again stated that the Court cannot stay negative orders. In **Co-operative Bank of Kenya Limited v Banking Insurance & Finance Union (Kenya) [2015] eKLR** this Court (Kantai J.A.) held as follows:-

"An order for stay of execution [pending appeal] is ordinarily an interim order which seeks to delay the performance of positive obligations that are set out in a decree as a result of a Judgment. The delay of performance presupposes the existence of a situation to stay – called a "positive order" – either an order that has not been complied with or has partly been complied with. See, for this general proposition, the holding of the Court of Appeal of Uganda in Mugenyi & Co. Advocates v National Insurance Corporation (Civil Appeal No. 13 of 1984) where it was stated:

'.... an order for stay of execution must be intended to serve a purpose ...' (emphasis supplied).

Further, in the more recent case of **Kenya Commercial Bank Limited v Tamarind Meadows Limited & 7 Other [2016] eKLR**, this Court expounded on stay of execution stating:-

"16. In Kanwal Sarjit Singh Dhiman v. Keshavji Juvraj Shah [2008] eKLR, the Court of Appeal, while dealing with a similar application for stay of a negative order, held as follows:

'The 2nd prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see Western College of Arts & Applied Sciences vs. Oranga & Others [1976] KLR 63 at page 66 paragraph C).'

17. The same reasoning was applied in the case of Raymond M. Omboga v. Austine Pyan Maranga (supra), that a negative order is one that is incapable of execution, and thus, incapable of being stayed. This is what the Court had to say on the matter:

"The Order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order ... The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise ..."

5. It is clear from the foregoing that as the orders sought to be stayed were negative orders, there is nothing for us to stay. This application is for dismissal.

The same is hereby dismissed with orders that costs abide the outcome of the intended appeal.

Dated and delivered at Nairobi this 29th day of January, 2021.

W. KARANJA

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A. K. MURGOR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR