



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: NAMBUYE, ASIKE-MAKHANDIA & KANTAL, J.J.A.)**

**CIVIL APPLICATION NO. 15 OF 2020**

**BETWEEN**

**FRANCIS NGARAMA KIRATU.....APPLICANT**

**AND**

**EQUITY BANK LIMITED.....1ST RESPONDENT**

**THE PURPLE ROYAL AUCTIONEERS.....2ND RESPONDENT**

**THE LAND REGISTRAR.....3RD RESPONDENT**

*(Being an application for stay of execution against the Ruling of the High Court of Kenya at Nyahururu (Wendoh, J.) dated 19th November, 2019*

**in**

**H.C.C.C. No. 4 of 2018)**

**\*\*\*\*\***

**RULING OF THE COURT**

The Motion dated 6th January, 2020 does not state the provisions of law that the applicant has invoked. Going by the prayers in the Motion it is clear that it is an application for stay of the ruling of the High Court (Wendoh, J.) delivered on 19th November, 2019. We are also asked to issue such directions as would serve to preserve the subject matter of the intended appeal. The grounds in support of the Motion and the 36 paragraphs affidavit of the applicant, **Francis Ngarama Kiragu**, are too long and contain unnecessary detail for an application of this nature, details that probably belong to the intended appeal. The salient facts for our purposes are that the applicant was registered as proprietor of a parcel of land, **L.R. No. Laikipia/OL'ARABEL/253 "the suit land"** which he offered to the 1st respondent, Equity Bank Limited, as security for a loan which was granted to him. The loan was not serviced, or not serviced on time and the 1st respondent, in exercise of its statutory power of sale, advertised the property for sale. According to the applicant he had purchased the suit land at Ksh.25,950,000; though its market value was Ksh.60,000,000 but the 1st respondent had sold it for Ksh.23,000,000, an action which the applicant contends breached many of his constitutional and statutory rights. The applicant admits that the suit land was sold at a public auction to a person who successfully bid for it.

The respondents did not file any replying affidavit and none of the parties filed written submissions which they were asked to do through the Hearing Notice served on them by the Deputy Registrar on 23rd February, 2021 at 12.17 p.m.

The principles that govern applications for stay of execution pending appeal are well known. For an applicant to succeed he must, firstly demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that it is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay. See **Stanley Kinyanjui Kangethe v Tony Ketter & Others [2013] eKLR**. The issues raised by the applicant to be taken on appeal include whether proper statutory notice was served and whether the suit land was sold at an undervaluation.

It will be remembered that what Wendoh, J. dealt with was an application for injunction which was refused. Those issues intended to be taken on appeal are actually live issues to be heard and determined by the trial Judge when the suit at the High Court is heard and determined. Those are not issues to be taken on appeal. On the whole we find that there is no arguable appeal.

On the nugatory aspect, which in the premises we need not address in the absence of an arguable appeal, the suit land having been sold the horse has bolted and nothing can be rendered nugatory here.

The Motion fails and is dismissed with no order on costs.

**DATED AND DELIVERED AT NAIROBI THIS 19TH DAY OF MARCH, 2021.**

**R.N. NAMBUYE**

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**JUDGE OF APPEAL**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

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

*Signed*

**DEPUTY REGISTRAR**