



IN THE COURT OF APPEAL

AT MOMBASA

(CORAM: OUKO, (P), KARANJA & GATEMBU, JJ. A.)

CIVIL APPLICATION NO. E19 OF 2020

BETWEEN

JAMES KAMAU & 42 OTHERS.....APPLICANTS

AND

LEONID LIMITED.....RESPONDENT

(Being an application for injunction relief and stay of execution

pending the hearing and determination of an intended

appeal arising from the judgment of the Environment and Land

Court of Kenya at Mombasa (Omollo, J.) dated 16th September,

2020 and delivered on 21st September, 2020 in ELC No. 253 of 2015)

RULING OF THE COURT

By a judgment dated 16th September, 2020, Omollo, J. of the Environment and Land Court dismissed the applicants' claim by adverse possession to parcel of land No. 2380/V/MN, MIRITINI, MOMBASA, reasoning that they had failed to prove on a balance of probabilities their entitlement to it.

On the other hand, the learned Judge allowed the respondent's counter-claim declaring the respondent's title over the suit property indefeasible and the applicants' trespassers. With that, the applicants were ordered to vacate the suit property within ninety (90) days of the date of the judgement, and in default, they would be evicted and their structures on the suit property demolished. The applicants were also condemned to pay costs of the suit and of the counter-claim.

The applicants are desirous of challenging that decision on appeal to this Court, but wish, in the meantime to be protected by an order of stay of execution of those orders pending the lodgement and determination of the intended appeal. In satisfaction of the well-known strictures for the grant of the relief sought under **Rule 5(2)(b)** of the Court of Appeal Rules, the applicants have urged that the intended appeal is arguable and further, that if an order staying their eviction and demolition of their houses is not granted, the intended appeal will become otiose.

Though the respondent, in its response to the application has assured the applicants that it has no intention of evicting them, for our part, in fulfillment of our duty under the aforesaid rule, we find that the question, whether or not adverse possession was proved, is an arguable issue.

If the respondent has no intention of evicting the applicants, then an order, in form of a stay of execution, confirming that intention would cause no prejudice to the respondent.

However, if they are evicted before the appeal is heard, the outcome, if in favour of the applicants will have no benefit to them. See **Stanley**

Kangethe Kinyanjui vs. Tony Ketter & 5 others [2013] eKLR.

Accordingly, we grant the prayers for stay of execution pending appeal. The applicants have 30 days within which to lodge the record of appeal, failing which the orders issued herein will lapse and the respondent will be at liberty to execute the impugned judgment and consequential orders arising therefrom.

Costs will be in the appeal.

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

W. OUKO, (P)

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JUDGE OF APPEAL

W. KARANJA

.....

JUDGE OF APPEAL

S. GATEMBU KAIRU, (FCIArb)

.....

JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR