



IN THE COURT OF APPEAL

AT KISUMU

(CORAM: OUKO, (P), MUSINGA, & MURGOR, J.J.A.)

CIVIL APPLICATION NO. 199 OF 2019

BETWEEN

LAWRENCE MMATA CHOREAPPLICANT

AND

MARY AWINO KWEYU1ST RESPONDENT

MELISSA MUHONJIA MMATA.....2ND RESPONDENT

D.C.I.O KAKAMEGA.....3RD RESPONDENT

ATTORNEY GENERAL.....INTERESTED PARTY

(An application in respect of the Ruling of the High Court at Kakamega (N.A. Matheka, J.) delivered on 4th July 2019

in

E.L.C Cause No. 81 of 2019)

RULING OF THE COURT

1. The applicant, who is self-represented, brought this application erroneously under **order 40 rules 1 and 2** of the **Civil Procedure Rules** seeking stay of execution of orders made by the Environment and Land Court (ELC) in **Case No. 81 of 2018** at Kakamega, pending hearing and determination of an appeal that he has preferred against the said ruling. The impugned ruling was delivered on 4th July 2019.
2. In the said ruling, the trial court ordered, *inter alia*, that an inhibition order do issue against a parcel of land known as **Butsotso/Shikoti/17938** (the suit property) pending hearing and determination of the suit. The Court also ordered consolidation of the aforesaid suit with **ELC Case No. 4 of 2019** which was also in respect of the suit property.
3. Following delivery of the said ruling, the applicant applied before the trial court for stay of execution, but the application was dismissed on 28th November 2019. The applicant states in his affidavit that the respondents are in the process of executing the trial court's orders, and if they do so, his appeal, which he believes is arguable, will be rendered nugatory.
4. The 1st respondent opposed the application. She stated, *inter alia*, that given the nature of orders issued by the trial court, an appeal against them cannot lie without leave, which was not sought; that the orders sought to be stayed had already been executed and therefore the application had been overtaken by events, thus the appeal is not arguable. The 1st respondent exhibited a copy of the prohibitory order that was presented for registration at Kakamega Land Registry on 25th July 2019. Similarly, the consolidation order took effect sometime in July 2019, she stated. For those reasons, we were urged to dismiss the application.
5. For this Court to grant an application for stay of execution under **rule 5(2)(b)** of the **Court's Rules**, the applicant must satisfy us that the appeal or intended appeal is arguable; and that unless the orders sought are granted, the appeal, if successful, shall be rendered nugatory. See **Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR**.
6. Apart from the fact that the application is premised on wrong provisions of the law, it is evident that the application has been overtaken by

events in that the inhibition order has already been presented at Kakamega Lands Registry, and the consolidation order has already been effected. The application has clearly been overtaken by events. We agree with the 1st respondent that the appeal is not arguable. Having so found, we need not consider the nugatory aspect of the appeal.

7. All in all, we find no merit in this application and dismiss it with costs to the 1st respondent.

Dated and delivered at Nairobi this 19th day of May, 2021

W. OUKO, (P)

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JUDGE OF APPEAL

D. K. MUSINGA

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR