



**IN THE COURT OF APPEAL**

**AT NAIROBI**

**(CORAM: KIAGE, GATEMBU & SICHALE, J.J.A)**

**CIVIL APPLICATION NO. 89 OF 2020 BETWEEN**

**MOHAMED SHAHID MOUGHAL.....APPLICANT**

**AND**

**MICHAEL MOOKE KIKAYE.....1<sup>ST</sup> RESPONDENT**

**THE LAND REGISTRAR KAJIADO.....2<sup>ND</sup> RESPONDENT**

**THE NATIONAL LAND COMMISSION.....3<sup>RD</sup> RESPONDENT**

**THE ATTORNEY GENERAL.....4<sup>TH</sup> RESPONDENT**

**ESTATE OF LEKERRA OLE KIKAE.....5<sup>TH</sup> RESPONDENT**

**ESTATE OF LEKERA KIKAE REIPA.....6<sup>TH</sup> RESPONDENT**

*(Being an application for stay of execution of the Judgment of the*

*Environment and Land Court at Kajiado (C. Ochieng, J.)*

*delivered on 2<sup>nd</sup> March 2020*

*in*

*ELC Case No. 753 of 2017)*

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**RULING OF THE COURT**

1. The applicant, Mohammed Shahid Moughal, has applied by notice of motion dated 19th March 2020 for orders of stay of execution of the judgment and decree of the Environment and Land Court at Machakos in ELC Case No. 753 of 2017 delivered on 10th March 2020 dismissing his suit and restraining him from interfering with “*resultant subdivisions of land parcel number Kajiado/Ildamat/3*” which the applicant claims to have purchased. The application is made under Rule (5)(2)(b) of the Court of Appeal Rules. He also seeks an order to restrain the Land Registrar, Kajiado, the 2nd respondent, from effecting any transaction on the said property pending the hearing and determination of the intended appeal from the said judgment. A notice of appeal was duly filed on 10th March 2020.

2. In his affidavit sworn on 19<sup>th</sup> March 2020 in support of the application, the applicant deposes that he entered into three separate agreements with the 1st respondent for the purchase of the property; that the learned Judge overlooked, or failed to consider one of those agreements in reaching the conclusion that the 1st respondent did not have

legal capacity to sell the property in the absence of letters of administration; that had the Judge considered that letters of administration were in place when the third agreement of 30th October 2013 was executed, the Judge would have reached a different conclusion.

3. Directions were given, in view of the Corona virus epidemic, that oral arguments would be dispensed with and the application would be considered on the basis of the application itself, affidavits and written submissions. In that regard, the application was listed for our consideration in the Recess Cause of Thursday 16<sup>th</sup> April 2020 by which time no replying affidavit or submissions had been filed on behalf of the respondents.

4. We have considered the material before us including the memorandum of appeal annexed to the application and the applicant's advocates written submissions and are satisfied that the intended appeal is not frivolous. There is for instance the contention that the Judge failed to consider that at the time the 3<sup>rd</sup> agreement for sale was executed on 30th October 2013, the 1<sup>st</sup> respondent had already obtained a certificate of confirmation of grant. We think the intended appeal is arguable.

5. As to whether the intended appeal will be rendered nugatory unless the orders sought are granted, the applicant asserts that it has been in possession of the property since 2009; and that further dealings with the property before the intended appeal is heard and determined would put the property out of his reach should the appeal succeed. We are in the circumstances persuaded that the property should be preserved pending the hearing and determination of the appeal.

6. We accordingly allow the application in terms of prayer 5 thereof with the result that the 2<sup>nd</sup> respondent is hereby ordered not to effect any further transaction on the property known as Title Number Kajiado/Ildamat /3 or on any resultant

subdivisions pending the hearing and determination of the intended appeal. Costs of the application shall be in the intended appeal.

Orders accordingly.

*Dated and delivered at Nairobi this 24<sup>th</sup> day of April, 2020.*

**P.O. KIAGE**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, FCI Arb**

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**JUDGE OF APPEAL**

**F. SICHALE**

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**JUDGE OF APPEAL**

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

**Signed**

**DEPUTY REGISTRAR**