



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO (P), KARANJA & J. MOHAMMED, J.J.A.)

ELDOR ET CIVIL APPLICATION NO. 126 OF 2019

BETWEEN

REDEMPTA SUSAN CHETEMBE.....APPLICANT

AND

ALICE MUHONJA KIRAMBI.....RESPONDENT

*(An Application for stay of execution of the judgment and decree of the Environment and Land Court of Kenya at Kitale (Mwangi Njoroge, J.) delivered on 14th June, 2018*

*in*

*ELC Misc. No. 48 of 2014)*

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RULING OF THE COURT

1. In a judgment dated 14th June, 2018, the Environment and Land Court (ELC) at Kitale (M. Njoroge, J.) entered judgment in favour of Alice Muhonja Kirambi (the respondent) declaring her the owner of land Parcel No. Transnzoia/Liyavo/187 by way of adverse possession. The learned Judge further ordered that the said property be registered in the respondent's name in place of the applicant's.

2. Aggrieved, the applicant filed a notice of appeal dated 29th July, 2019 and subsequently filed this notice of motion on 1st October, 2019 seeking, *inter alia*, an order:-

**“That pending hearing and determination of the appeal, there be an order of stay of execution of the judgment and decree delivered by Hon. Justice Mwangi Njoroge on 14th June, 2018 in Kitale ELC Misc. No. 48 of 2014 with respect to land parcel No. Trans Nzoia/Liyavo/187.”**

3. From the nine grounds on the face of the application coupled with the depositions in the applicant's supporting affidavit sworn on 1st October, 2019, the applicant is on appeal challenging the decision of the ELC on grounds that the learned Judge failed to appreciate that the applicant's occupation of the land in question was permissive and not hostile. Adverse possession had therefore not been proved. The applicant maintains that that is an arguable point on appeal and the appeal has overwhelming chances of success.

4. She also urges that the respondent is at an advanced stage of processing the Title Deed in execution of the impugned judgment and unless stay orders are granted, her appeal will be rendered nugatory as the transfer of the suit property will have been effected to the applicant. She therefore urged us to allow the application and grant the stay order sought.

5. In response, the respondent vide a replying affidavit sworn on 22nd June, 2020 deposed that the judgment was rendered two years ago and as there were no stay orders, the High Court having dismissed the applicant's application for stay of execution, the respondent went ahead and processed the Title Deed. She annexed a copy of the Title Deed dated 28th November, 2019 to the said affidavit. From the Title Deed, it is evident that the respondent has already charged the land to Barclays Bank of Kenya to secure a loan for Ksh. 600,000/=.

6. The existence of this Title Deed is not denied. The applicant is asking the court to stop that which has already come to pass. In as much as we think the appeal raises an arguable issue as to whether the respondent's occupation of the land was adverse in view of the circumstances surrounding her entry into the land, the application is caught up by the doctrine of mootness. The train has already left the station as the registration process cannot be stayed.

7. It is trite that for an application such as this one to succeed, the twin principles of arguability and nugatory aspect have to be satisfied. See **Stanley Kangethe Kinyanjui v. Tony Ketter & 5 others [2013] eKLR.**

8. In this case, we are persuaded that arguability has been established. Nonetheless, the nugatory aspect has not been established as the property has already been transferred and the Court cannot stop that which has already taken place. As the twin principles are conjunctive establishing only one of them does not suffice. See **David Morton Silverstein v Atsango Chesoni, Civil Application No. Nai 189 of 2001.** This application therefore fails. Having failed to establish the nugatory aspect, the inevitable conclusion is that this application fails. We dismiss

it with no order as to costs.

**Dated and delivered at Nairobi this 7th day of August, 2020.**

**W. OUKO, (P)**

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**JUDGE OF APPEAL**

**W. KARANJA**

.....

**JUDGE OF APPEAL**

**J. MOHAMMED**

.....

**JUDGE OF APPEAL**

*I certify that this is a true*

*copy of the original.*

*Signed*

**DEPUTY REGISTRAR**