



**IN THE COURT OF APPEAL**

**AT NAIROBI**

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

**CIVIL APPLICATION NO. 115 OF 2020**

**BETWEEN**

**DAKAWOU TRANSPORTERS LIMITED.....APPLICANT**

**AND**

**NATIONAL LAND COMMISSION.....1ST RESPONDENT**

**CHIEF REGISTRAR OF LANDS.....2ND RESPONDENT**

**THE HON.ATTORNEY GENERAL.....3RD RESPONDENT**

**RAPHAEL MUSYOKI NDETI (Suing as an Administrator of the Estate of**

**PETER NZUKI NDETI).....INTERESTED PARTY**

(Being an application seeking stay of Execution of the Judgment and Decree pending the hearing and determination of the intended appeal of the Environment and Land Court of Kenya at Machakos (A. O. Angote, J.) dated 21st February 2020 **in E.L.C Misc. Appl. (JR) No.56 of 2018**)

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**RULING OF THE COURT**

**1. UPON** perusing the Notice of Motion dated 11th May 2019 brought by the applicant under **rule 5(2)(b)** of the **Court of Appeal Rules** and **sections 3A** and **3B** of the **Appellate Jurisdiction Act**, where the applicant seeks, *inter alia*, stay of execution of the judgment and decree of the **Environment and Land Court at Machakos** in **Judicial Review No.56 of 2018** and a conservatory order to restrain the 2nd respondent from transferring **Title L.R No.337/1208** (the suit property) pending hearing and determination of an intended appeal, as well as a conservatory order to restrain the 1st respondent from paying any compensation for the suit property; and

**2. UPON** perusing the affidavit of **Ahmed Abdille Noor** sworn on 11th May 2020 in support of the application where he states, *inter alia*, that the trial court agreed with the decision of the 1st respondent and directed the 2nd respondent to revoke the title in respect of the suit property and issue a new one to the **“family of Peter Nzuki Ndeti”**, which held a letter of allotment in 1997 whereas the applicant held a valid title to the suit property and was expecting to be paid compensation of **Kshs.89,396,888** after the suit property was compulsorily acquired, but for the impugned judgment, which he intends to appeal against; and

**3. UPON** perusing the replying affidavit of **Raphael Musyoki Ndeti**, the 4th respondent, sworn on 11th June 2020, where he deposes, *inter alia*, that the impugned decision that is sought to be stayed is a negative order that is by law not amenable to any order of stay; and in any event the family of Peter Nzuki Ndeti has already been duly registered as the legitimate owner of the suit property, the Certificate of Title in the name **Peter Nzuki Ndeti Trust Registered Trustees** having been issued on 11th May 2020, the application has been overtaken by events; and

**4. UPON** perusing the parties’ submissions, and having considered the principles that guide this Court in determination of **rule 5(2)(b)** applications as summarised in **Stanley Kangethe Kinyanjui v Tony Ketter & Others [2013] eKLR**, and noting that although the applicant has an arguable appeal, he has not demonstrated that the same will be rendered nugatory unless the orders sought are granted; and more importantly, bearing in mind that the order sought to be stayed was a negative one and the application has been overtaken by events in that the 4th respondent has already been issued with a Certificate of Title, we make the following orders :-

i. The Notice of Motion dated 11th May 2020 is dismissed.

ii. The applicant shall bear the costs of this application.

**Dated and delivered at Nairobi this 23<sup>rd</sup> day of October, 2020.**

**D.K. MUSINGA**

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**JUDGE OF APPEAL**

**P. O. KIAGE**

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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**