



IN THE COURT OF APPEAL

AT KISUMU

[CORAM: NAMBUYE, MUSINGA & SICHALE, J.J.A.]

CIVIL APPLICATION NO. 60 OF 2020

BETWEEN

THE REGISTERED TRUSTEES OF THE AGRICULTURAL
SOCIETY OF KENYA (ASK).....APPLICANT

AND

LAKE BASIN DEVELOPMENT
AUTHORITY.....RESPONDENT

(Being an appeal from the ruling of the High Court of Kenya at

Kisumu (A.O. Ombwayo, J) dated 29th April, 2020 in ELC No. 49 of 2019)

RULING OF THE COURT

1. UPON perusing the Notice of Motion dated 25th May, 2020 by the applicant, said to be brought under **Section 1A and 1B of the Civil Procedure Act, Rule 5(2) of this Court's Rules** where the applicant seeks an order of stay of execution of the ruling delivered on 29th April, 2020 by Ombwayo, J. in ELC No. 49 of 2020 pending the hearing and determination of the intended appeal; and
2. UPON perusing the affidavit of **BATRAM MUTHUKA**, the Chief Executive Officer of the applicant, sworn on 25th May, 2020 in support of the application thereof; and
3. UPON perusing the affidavit of **DR. RAYMOND OMOLO**, the Managing Director of the respondent, sworn on 7th September, 2020; and
4. UPON perusing the applicant's submissions and its digest of authorities both dated 15th September, 2020 wherein it is submitted, *inter alia*, that both the applicant and the respondent are the allottees of the land, the subject of the dispute; that the trial court erred in granting a mandatory injunction at an interlocutory stage; that the applicant will suffer

“*significant loss*”, absent stay; and
5. UPON perusing the respondent's submissions dated 7th September, 2020 in which it is submitted, *inter alia*, that the respondent has a superior title to the suit property; that an order of mandatory injunction was appropriately issued in the circumstances of the case; and
6. **HAVING** considered the principles that guide this Court in the determination of **Rule 5(2) (b)** applications as enunciated in *Stanley Kang'ethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR*; and noting that the applicant has established that it has an arguable appeal but has failed to establish that the intended appeal will be rendered nugatory given the fact that the order sought to be stayed is a negative order directing the applicant “... *to stop any activities* ...” on the suit property. (See *Kenya Commercial Bank Limited vs. Tamarind Meadows Limited & 7 others [2016] eKLR*); and having reached this conclusion, we make the following orders:

(i) The Notice of Motion dated 25th May, 2020 is disallowed.

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

Dated and Delivered at Nairobi this 23rd Day of October, 2020.

R. N. NAMBUYE

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JUDGE OF APPEAL

D.K. MUSINGA

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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