



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: OUKO, (P), KARANJA & KOOME, JJA)

NYERI CIVIL APPLICATION NO. 142 OF 2018

BETWEEN

WILLIAM NJIHIA KIMANI.....APPLICANT

AND

FRANCIS WAWERU MBOCHI.....RESPONDENT

(Being an application for conservatory orders and an injunction against the Ruling of the High Court of Kenya at Nairobi (H.M. Okwengu, J, - as she then was) dated 23rd November, 2010 in ELC No. 2761 of 1994 Currently: Nyahururu E.L.C. No. 36 of 2018)

RULING OF THE COURT

Like is always the norm with land disputes, this dispute has been in court since 1994. The current application was triggered by a decision made on 23rd November, 2010 by the High Court in which the respondent’s application seeking cancellation of the title deed issued in favour of the applicant was allowed. The applicant was aggrieved but did not lodge a notice of appeal. By an application dated 11th June, 2019, he sought from this Court leave to file the notice of appeal out of time.

Nambuye, JA in chambers, having dismissed the application, the applicant made a reference to a full bench, which also found no merit in the application and likewise rejected it on 7th August, 2020.

Even as these were happening, the applicant’s motion dated 14th November, 2018 remained alive. In it, he has asked that conservatory orders be issued in respect of certain parcels of land in addition to an order of injunction to restrain the respondent from evicting him from those parcels of land.

Though this history is clear, none of the parties have made reference to it. The respondent’s concern is, however, that the applicant is abusing the court process by making numerous applications over the same matter and cited, among those cases, **Nyahururu ELC No. 36 of 2018**, which is still pending determination of more or less the same matters now being litigated in this motion.

It is also his contention that since no restraining orders were issued restricting him from in any way dealing with the suit property, he has gone ahead and transferred the parcels to third parties on 16th October, 2017.

The proper course, after the applicant failed to get the time enlarged, was to withdraw this application. As it is, there is no foundation upon which this application can be anchored without a notice of appeal. See **Safaricom Limited vs. Ocean View Beach Hotel Limited and 2 others**, Civil Application No. 327 of 2009.

Further, no order of stay can be granted when the substratum sought to be stayed has shifted or dissipated.

In the end, we find no merit in this application, which we accordingly dismiss with costs to the respondent.

Dated and delivered at Nairobi this 20th day of November, 2020.

W. OUKO, (P)

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JUDGE OF APPEAL

W. KARANJA

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JUDGE OF APPEAL

M.K. KOOME

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JUDGE OF APPEAL

I certify that this is a true

copy of the original.

Signed

DEPUTY REGISTRAR