



IN THE COURT OF APPEAL

AT NAIROBI

(CORAM: ASIKE-MAKHANDIA, KIAGE & SICHALE, J.J.A)

CIVIL APPLICATION NO. 74 OF 2020

BETWEEN

MARGARET NYAMBURA KARANJA.....APPLICANT

AND

JOSEPH NJUI MUNGAI.....1ST RESPONDENT

PHILISILA NJERI MUNGAI.....2ND RESPONDENT

(An application under Rule 5(2)(b) of the Court of Appeal Rules 2010 seeking injunction

pending the hearing and determination of the intended appeal from the Judgment of the

Environment and Land Court of Kenya at Nairobi (Okong'o, J.)

dated 30th January, 2020)

in

ELC No. 1016 of 2007)

RULING OF THE COURT

The applicant **Margaret Nyambura Karanja** seeks under **Rule 5(2)(b)** of this Court's Rules an order of injunction to restrain the respondents, their agents and/or servants from evicting, threatening to evict, harassing or in any way interfering with her quiet possession of **L.R. No. 4953/453** situate in Thika Sub-County, pending the hearing and determination of an intended appeal against the decision of the Nairobi Environment and Land Court (Okong'o, J.) made on 30th January 2020 against which she has already lodged a notice of appeal.

By that judgment the learned Judge decreed that the applicant do vacate and hand over possession of the suit property, together with the developments thereon, to the respondents within **ninety (90)** days of the judgment in default of which she was to be forcefully evicted therefrom.

In the grounds appearing on the face of the motion as well as the affidavit in its support, the applicant avers that she is the widow and personal representative of **Joel Karanja Njoroge** (deceased), who had entered into an agreement dated 27th June 1988 for the purchase of the suit property from **Mary Wanjiru Mungai** (deceased) and the 2nd respondent, **Philisila Njeri Mungai** for **Kshs. 950,000** of which **Kshs. 400,000** was paid to the vendors. Her husband took immediate possession per the terms of the agreement on which he commenced business and carried on developments amounting to **Kshs. 9,800,000** thereby raising the value to the property to nearly **Kshs. 20,000,000**. She faults the learned Judge for ordering her to hand over possession or be evicted therefrom after three decades and for holding that her husband undertook the developments at his own risk yet it was expressly stipulated in the agreement. She complains that the impugned judgment occasioned her grave injustice and maintains that she has an arguable appeal which would be rendered nugatory unless the injunction is granted.

By a replying affidavit sworn by **Joseph Njui Mungai**, the respondents oppose the motion. The existence of the agreement is admitted, as is the fact of the applicant having taken possession and undertaken development of the suit property. It is averred that the decision of the

learned Judge was just and the respondents are ready to refund the deposit of the purchase price that had been paid by the applicant's husband.

Having given the motion due consideration and borne in mind what has been stated in opposition thereto, it seems to us quite clear that the intended appeal is not a frivolous one. We have perused the exhibited draft memorandum of appeal and it does raise questions worthy of the Court's interrogation. In particular, the Court will have to consider the veracity of the complaint that the learned Judge *re-wrote the contract between the parties* and misconstrued the applicant's development on the suit property as being at her own risk yet, according to her, it was per contract. It is enough that an applicant raise a single arguable point and it need not be one that would necessarily succeed.

Beyond proving arguability, an applicant for **Rule 5(2)(b)** intervention must also show that if the injunction sought is not granted, his appeal is likely to be rendered nugatory or no effect by reason of the apprehended harm and loss having occurred in the intervening period. It is not disputed that the subject matter is land which the applicant has been in occupation of pursuant to contract for three decades and has constructed developments thereon at a considerable sum of money. It is plain to see that were she to be evicted therefrom and the land be handed over to the respondents, she would suffer great prejudice likely to render her appeal, if successfully, quite nugatory.

Having borne in mind all the matters that fall for consideration on an application such as before us and the jurisprudence thereon as very succinctly set out by this Court in ***STANLEY KANGETHE KINYANJUI vs. TONNY KETTER & 2 OTHERS [2013] eKLR***, we are satisfied that the application is for granting. We accordingly order that there be an injunction as prayed pending the intended appeal, the record whereof we direct to be filed, if not yet filed, within **thirty**

(30) days of the date hereof.

The costs of this motion shall abide the outcome of the intended appeal.

Dated and delivered at Nairobi this 6th day of November, 2020.

ASIKE-MAKHANDIA

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JUDGE OF APPEAL

P. O. KIAGE

.....

JUDGE OF APPEAL

F. SICHALE

.....

JUDGE OF APPEAL

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

Signed

DEPUTY REGISTRAR