



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: KOOME, ASIKE-MAKHANDIA & MUSINGA, JJ.A.)

CIVIL APPLICATION NO. 25 OF 2020

BETWEEN

ERICK KIPKURGAT KIPRONO.....APPLICANT

AND

PATRICK KIMUTAI KIPRONO.....RESPONDENT

(Being an appeal arising from the decision of the Environment and Land Court of Kenya at Eldoret (Ombwayo, J.) in *E.L.C. Case No. 290 of 2013.*)

RULING OF THE COURT

1. The applicant seeks stay of execution of the decree in Eldoret *Environment and Land Court (ELC), Case No. 290 of 2013* pending hearing and determination of an intended appeal.
2. In his affidavit in support of the application, the applicant depones that on 30th May 2019 the ELC issued a decree against him directing that a parcel of land known as *L.R. Pioneer Ngeria Block 1 (EATEC) 1426 (the suit property)* be subdivided into two equal portions and 5 acres thereof be transferred to the respondent, his brother.
3. Being aggrieved by that decision, the applicant filed a notice of appeal on 31st May 2019 and applied for certified copies of the proceedings. The applicant also applied before the trial court for stay of execution of the impugned judgment pending appeal, but the application was dismissed.
4. The applicant believes that his intended appeal is arguable because the suit land is registered in his name and the trial court erred in holding that he held the land in trust for himself and the respondent; and for holding that the respondent contributed towards purchase of the suit property. There is an annexed draft of a memorandum of appeal that sets out the intended grounds of appeal.
5. The applicant further states that he has made intensive developments on the suit property since 2000; that if the order sought is not granted the intended appeal, if successful, will be rendered nugatory in that the suit property will have been subdivided and 5 acres transferred to the respondent, who may even dispose of it before the intended appeal is heard and determined.
6. The respondent did not file any replying affidavit. The Court had directed that the application be disposed of by way of written submissions due to the Covid-19 pandemic that has affected the normal court operations. The applicant's counsel filed submissions and a digest of authorities.
7. We have considered the application in light of the principles that guide this Court in determining applications under *rule 5(2)(b)* of this Court's Rules as summarised in Stanley

Kangethe Kinyanjui v Tony Ketter & 5 Others [2013] eKLR.

8. We are satisfied that the applicant has demonstrated that he has an arguable appeal. That is discernible from the draft memorandum of appeal. An arguable appeal is not one that must succeed, it is one that is not frivolous and merits a full consideration by the Court.
9. The applicant has also demonstrated that unless the orders sought are granted, the intended appeal, if successful, will be rendered nugatory.

Consequently, we grant stay of execution of the trial court's judgment pending hearing and determination of the intended appeal. The costs of the application shall be in the appeal.

Dated and delivered at Mombasa this 18th day of December, 2020.

M. K. KOOME

.....

JUDGE OF APPEAL

ASIKE-MAKHANDIA

.....

JUDGE OF APPEAL

D.K. MUSINGA

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR