



IN THE COURT OF APPEAL

AT NYERI

(CORAM: OUKO (P), KOOME & KANTAL, J.J.A.)

CIVIL APPLICATION NO. 31 OF 2020

BETWEEN

DANSON M.....UNENE KIBETU .APPLICANT

AND

EDWARD NJERU.....1ST RESPONDENT

EVANS MBOGO MWANGI2ND RESPONDENT

JAMES MURIUKI KIRAGU.....3RD RESPONDENT

(Application for injunction pending the filing, hearing and determination of an intended appeal against the Judgment of the Environment and Land Court of Kenya at Kerugoya (Cherono, J.) dated 30th April, 2020

in

ELC Case No. 26 of 2016)

RULING OF THE COURT

In a Judgment delivered on 30th April, 2020 by the Environment and Land Court at Kerugoya (Cherono, J.) the applicant's suit failed and was dismissed. The applicant had sought various orders: a declaration that he was the owner of Plot No. 215 Kerugoya; a declaration that the acquisition of a leasehold in respect of a **Plot No. Kerugoya/Township/250/448** was improper, unprocedural, illegal, null and void *ab initio*; an order for cancellation of the said leasehold interest and a permanent injunction to issue restraining the respondents from encroaching or trespassing on Plot No. 215 Kerugoya. The respondents resisted the claim and, as stated, the suit was dismissed.

We are asked in the Motion on Notice said to be brought under **rules 1 (2) and 5(2) (b)** of the **Rules of this Court** in the main, to order that pending the hearing and determination of the application and of an intended appeal, we grant an injunction against the 3rd respondent (**James Muriuki Kiragu**) restraining him from interfering with the quiet possession by the applicant (Danson Munene Kibetu) over the said Plot No. Kerugoya/Township/250/448 (the suit land) or from selling, alienating or transferring the said plot.

The grounds in support of the Motion and in a supporting affidavit of the applicant it is stated, amongst other things that the applicant is dissatisfied with the said Judgment and has filed a Notice of Appeal; that the applicant is in use and occupation of the suit land since 1995; that in the case before the trial court the applicant had challenged the issuance of a lease certificate to the respondents; that the respondents had never been in occupation of the suit land; that Certificate of lease was issued to the respondents in the year 2002; that the intended appeal is arguable and the applicant will suffer loss and damage if an injunction is not granted. It is also stated that after a Certificate of Lease was issued to the 1st respondent (**Edward Njeru**) he transferred the same to the 2nd respondent (**Edward Mbogo Mwangi**) and a further transfer was made to the 3rd respondent (**James Muriuki Kiragu**).

The applicant filed written submissions which we have perused and List of Authorities which we have considered. We have also perused draft Memorandum of Appeal.

There was no replying affidavit from any of the respondents when we heard the Motion on 7th October, 2020.

The principles that apply in an application of this nature are well settled. For an applicant to succeed he must, firstly, demonstrate that the appeal, or intended appeal, as the case may be, is arguable, which is the same as saying that the appeal is not frivolous. Secondly, the applicant must show that the appeal would be rendered nugatory absent stay - See the case of **Stanley Kangethe Kinyanjui v Tony Ketter & Others [2013] eKLR** where the principles in a **rule 5 (2) (b)** application are well summarized.

The applicant depones at paragraph 5 of his supporting affidavit that a Certificate of Lease was issued to the 1st respondent in respect of the suit land who later transferred the land to the 2nd respondent who subsequently transferred the land to the 3rd respondent. That certificate of lease, according to the applicant, was issued to the 1st respondent on 25th April, 2002 and transfer to the 2nd respondent was on 22nd April, 2010.

It is clear from the record of the application that the applicant has never held any title to the suit land. The suit land was registered in the 1st respondent's name in April, 2002 and the suit land has since changed hands to the 2nd respondent and then to the 3rd respondent. We cannot, in the premises, see any arguable point in the intended appeal where it would appear the legal ownership of the suit land has been established. Being of that view we need not consider whether the intended appeal would be rendered nugatory if we don't grant stay of execution. The Motion fails and is dismissed. We make no order on costs as the respondents did not respond to the Motion

Dated and delivered at Nairobi this 4th day of December, 2020.

W. OUKO, (P)

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JUDGE OF APPEAL

M.K. KOOME

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JUDGE OF APPEAL

S. ole KANTAI

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JUDGE OF APPEAL

I certify that this is a true

copy of the original

Signed

DEPUTY REGISTRAR