



IN THE COURT OF APPEAL

AT NYERI

[CORAM: ASIKE- MAKHANDIA, GATEMBU & SICHALE, JJ.A.] NYERI CIVIL APPLICATION NO. 81 OF 2020

**WILLY KIPKOECH KIRUI .....APPLICANT**

**AND**

**PETER KIPLANGAT RONO..... RESPONDENT**

(Application for stay of execution of judgment and order from the decision of the Environment and Land Court at Kericho (J.M. Onyango, J) dated 30th July, 2020 **IN ELC appeal No. 3 of 2018**)

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**RULING OF THE COURT**

1. UPON perusing the Notice of Motion dated **19<sup>th</sup> August, 2020** by the applicant brought under **Rule 5 (2) (b) of this Court’s Rules and Sections 3A and 3B of the Appellate Jurisdiction Act** where the applicant seeks, in the main, an injunction to restrain the respondent, his agents, servants, employees and or representatives or anyone working under him or for him from in any way interfering or dealing with Title Number **Kericho/Kipchimchim/2192** (the suit premises) pending the hearing and determination of an intended appeal from the order/decreed and judgment of the Environment and Land Court (ELC) Appeal No. 3 of 2018 delivered by **Onyango, J** on **30<sup>th</sup> July, 2020**; and

2 UPON perusing the affidavit of **Willy Kipkoech Kirui** sworn on **19<sup>th</sup> August, 2020** in support of the application; and

3. UPON perusing the applicant’s submissions wherein it is contended that the respondent filed Kericho CMCC No. 108 of 2014 against the applicant’s deceased father and sought a refund of Kshs 500,000.00 for the sale/purchase of one acre of the suit premises or in the alternative an order of specific performance of the contract of sale; that the magistrate’s court entered a default judgment against the applicant’s father; that the applicant’s appeal against the said decision was dismissed by **Onyango, J** and the applicant is desirous of appealing against the dismissal by **Onyango, J**; that the respondent is hell-bent on building on the suit property, unless otherwise injuncted; and

4. UPON perusing the respondent’s submissions in which it is submitted that the orders sought to be stayed were negative orders, the applicant’s appeal having been dismissed; and

5. HAVING considered the principles that guide this Court in determination of Rule 5(2)(b) applications as summarized in **Stanley Kang’ethe Kinyanjui vs. Tony Keter & 5 Others [2013] eKLR** and noting that the applicant has not demonstrated that it has an arguable appeal which may be rendered nugatory unless the orders sought are granted, given that the applicant’s father sold the one acre of the suit premises to the respondent who in CMCC No. 106 of 2014 obtained a judgment in his favour and that the suit premises was subsequently auctioned and sold to a third party who is not a party in this appeal and/or in the ELC Suit, we make the following orders:

- i. The Notice of Motion dated **19<sup>th</sup> August, 2020** is disallowed;
- ii. The applicant shall bear the costs of the application.

**Dated and Delivered at Nairobi this 4<sup>th</sup> Day of December, 2020.**

**ASIKE-MAKHANDIA**

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**JUDGE OF APPEAL**

**S. GATEMBU KAIRU, (FCI Arb)**

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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**