



REPUBLIC OF KENYA
 IN THE COURT OF APPEAL OF KENYA
 AT NAIROBI

Civil Appli 311 of 2008 (UR 206/2008)

TAIKO MORIAT..... 1ST APPLICANT
 SEELA OLE MORIATI 2ND APPLICANT
 PARSANGA LENKINYI 3RD APPLICANT
 RIAMET OLE LENKERE 4TH APPLICANT

AND

MELTON LENKAKURO 1ST RESPONDENT
 PETER MERIN SESEI 2ND RESPONDENT
 TUNGUNGUA OLE NDETE 3RD RESPONDENT
 SIRINKET RISIE 4TH RESPONDENT
 SAMUEL KAYIOR LOLKINYIE 5TH RESPONDENT
 LELUAI LOOKWAKARARA 6TH RESPONDENT
 TEKETI OLE LEIKSUMA 7TH RESPONDENT

(Application for stay of execution pending an appeal from the judgment of the High Court of Kenya Nairobi (Ang’awa, J) dated 31st July, 2008

In

H.C. C. C. No. 317 of 2004)

RULING OF THE COURT

This being a motion under *Rule 5 (2) (b)* of the Court of Appeal Rules, the four applicants were bound to satisfy the Court on two well known issues, namely, that they have an arguable appeal, i.e. an appeal

which is not frivolous and that if we do not grant to them the orders sought in their motion and their proposed appeal were to succeed in the end that success would have been rendered nugatory by the refusal to grant the orders sought. The applicants were required to meet not one but both of these requirements.

On the material placed before us, we are prepared to hold, and we do in fact hold that even if the proposed appeal is arguable, the appellants have not shown to us how the eventual success of the appeal would be rendered nugatory. The decision of the learned Judge sought to be challenged on appeal did not say that the applicants themselves, as members of the now registered Entarara Group Ranch were to be evicted from the land already registered in the name of the Group Ranch. Prayer Number 3 in the notice of motion to the effect that:-

“--- the Respondent be restrained by an order of this Court from evicting the plaintiffs and their families from the suit land and from carrying out sub-division or in any other manner interfering with the title and occupation of the Applicants”

is really irrelevant to the issues at hand. As we have said the applicants, just as the respondents, are members of the Group Ranch and there is no material placed before us to show that one group of members is planning to evict another group of members. On the contrary it was the applicants who had tried to evict the respondents from the disputed farm claiming that the respondents had no business being on the farm. Rawal, J while holding that the respondents, as individuals in their own names were not entitled to ownership of the farm, nevertheless gave to the respondents nine months within which to register the Group Ranch. Nobody appealed against the orders of Rawal, J and thereafter the Group Ranch was registered. Ang'awa, J whose decision is to be challenged on appeal, ordered that the previous title issued to the applicants and two or three others be cancelled and a new title be issued in the name of the Group Ranch. That has already been done. There is no evidence before us that the Group Ranch proposes to sub-divide the land and issue separate titles to the individual members of the Group Ranch. The title previously issued to the applicants has already been cancelled and replaced with a new one in the name of the Group Ranch. We cannot prevent what has already been done. Prayer No. 2 in the motion is a general one that we stay the judgment entered by Ang'awa, J on 31st July, 2008 and that we stay all consequential orders arising from that judgment. The orders of Ang'awa, J with regard to the cancellation of the applicants' previous title have been effected. The applicants cannot be evicted from the land because the Judge did not order their eviction therefrom. There is no evidence or any intention to sub-divide and the respondents, as members of the Group Ranch, cannot be kept away from the land. In any case they would appear either to have been living on the same or have been using the land to graze their cattle. Otherwise, why would the applicants have asked Rawal, J, in the previous case, i.e. H.C.C.C. No. 335 of 1994 for the eviction of the respondents and other persons claiming to be members of the then unregistered Group Ranch? As we have pointed out it was after Rawal, J's judgment that the Group Ranch was registered. We think there would be no use in granting any of the orders sought in the motion. In other words, we are not satisfied that the proposed appeal will be rendered nugatory by our refusal to grant the orders sought in the motion.

That being the view we take of the matter, we order that the applicants' notice of motion dated 2nd December, 2008 and lodged in the Court on 4th December, 2008, nearly five months after Ang'awa, J's judgment, be and is hereby dismissed. The costs of the dismissed motion shall abide the proposed appeal. Those are our orders.

Dated and delivered at Nairobi this 13th day of February, 2009.

R.S.C. OMOLO

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JUDGE OF APPEAL

E.M. GITHINJI

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JUDGE OF APPEAL

J. ALUOCH

.....

JUDGE OF APPEAL

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

DEPUTY REGISTRAR.