



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT OF KENYA

AT NAKURU

CIVIL APPEAL NO. 15 OF 2014

ETHICS & ANTI CORRUPTION

COMMISSIONAPPELLANT/APPLICANT

VERSUS

ROBERT H NDUBI1ST RESPONDENT

DAVID KIPSANG2ND RESPONDENT

RULING

(Application for stay pending appeal, application allowed).

1. The application before me is one for stay pending appeal. But before I go to the gist of it, I think it is important that I set out some background to this suit.

2. Through a suit filed on 22 February 2012 in the Chief Magistrate's Court in Nakuru, the 1st respondent, Robert Ndubi, as plaintiff, sued David Kipsang, the 2nd respondent herein, for a declaration that he is the registered lessee of the property Nakuru Municipality Block 4/232 and for mesne profits from 1 May 2010 to the date of judgement. The case of the plaintiff, was that he purchased the suit property on 10 February 2010 from the previous owners, Julius Matasyo and Flora Ayiti Matasyo, and in March of 2010, he gave notice to the defendant to give vacant possession of the property. The defendant did not move out hence the suit. In his case, the plaintiff averred that he would have obtained a rental income of Kshs. 15,000/= per month. The defendant did not enter appearance and the matter proceeded ex-parte. Judgment was entered for the plaintiff on 28 May 2012 and mesne profits assessed at Kshs. 150,000/=.

3. The plaintiff moved to execute the judgment and that is when the Ethics and Anti-Corruption Commission, the appellant herein, filed proceedings objecting to the attachment vide the provisions of Order 22 Rule 51 of the Civil Procedure Rules. Their objection was based on the premise that the suit property was owned by the Government, through the Ministry of Public Works, and is identified by the Government as Naku/Hou/MG/176. It was their contention that the property is public property and has never left the hands of the Government. They averred that the defendant in the matter, the 2nd respondent, has no interest in it, as he was merely a tenant of the Government. They also raised the issue that the Magistrate's Court lacked jurisdiction to handle the matter. The objection was heard and dismissed on 17 January 2014.

4. Aggrieved by the ruling, the objector filed this appeal. 27 grounds of appeal have been raised but in a

nutshell, the objector has raised the issue of jurisdiction of the Magistrate's Court and is of the view that the court erred in holding that it needed to be a substantive party to raise the issue that the property is Government owned. The appellant also filed an application for stay of execution of the decree pending appeal. That is the application before me. In the application, the appellant has averred that the plaintiff had moved to demolish the house and that the premises is in possession of a Government employee. The application is strongly opposed by the 1st respondent, who is the plaintiff and the decree holder in the lower court suit. The basis of his opposition is that the trial court was correct in dismissing the objection proceedings and that he is the legitimate proprietor of the suit property.

5. I have considered the submissions of both counsels for the appellant and 1st respondent. What I have before me is an application for stay pending appeal. The parties went to great lengths to assert their rights over the property, but I think that should be preserved for the main appeal. The essence of stay pending appeal is to preserve the subject matter of litigation, so that the appeal, if successful, is not rendered worthless.

6. In this matter, I think that the status quo before the decree was executed ought to be preserved so that if the appellant succeeds in the appeal, the same is not rendered nugatory.

7. I therefore allow the application for stay pending appeal. I direct that the status quo which was prevailing before execution of the decree be maintained and the appeal be fast-tracked for hearing. The status quo as I understand it, is that the property was in the hands of the Ministry of Public Works and the 2nd respondent was residing in it. Let that status abide as we hear the appeal. The costs of this application will be costs in the appeal.

8. It is so ordered.

Dated, signed and delivered in open court at Nakuru this 22nd day of October 2015.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

In presence of: -

Mr Ongondi holding brief for Mr Muraya for the applicant.

Mr Ondande holding brief for Mr. Mongeri for 1st respondent.

MUNYAO SILA

JUDGE

ENVIRONMENT AND LAND COURT

AT NAKURU