



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

ELC APPEAL 108 OF 2019

WILSON MWIRIGI MANYARA.....1ST APPELLANT

M'IMANYARA M'MURITHI.....2ND APPELLANT

VERSUS

MOFFAT GICHURU MANYARA.....RESPONDENT

RULING

1. The appellant herein filed a memorandum of appeal on 5.9.2019 against the ruling of the honourable E.M Ayuka SRM in Nkubu PMC – ELC case no. 15/2019 dated 8.8.2019. The applicant further filed an application for a stay of execution of the aforementioned ruling pending the hearing of the application and the appeal. Both the appeal and the application are yet to be heard. The applicant through his advocate has informed the court that although the lower court file has been forwarded to this court the lower court has opened a skeleton file and is proceeding with the case. He therefore prays for a stay of proceedings before the lower court.

2. In response counsel for the respondent has averred that no orders of stay of proceedings were ever sought and therefore there is nothing barring the lower court from proceeding with the matter. That after the court rendered its ruling in the Nkubu matter, the 1st appellant in total disregard of the court orders embarked on committing waste and wanton destruction of the tea bushes which prompted the respondent herein to file an application dated 19.9.2019 for contempt which application is slated for ruling on 20.1.2020.

3. The respondent contends that the appellant wants the lower court proceedings to be stayed in order to perpetuate the wanton destruction.

4. I have perused the entire record and from the look of it, the lower court file is at the infancy stage and so is this appeal. A perusal of the record indicates that the parties herein are close family members where by in the lower court the 2nd defendant appears to be the father of the plaintiff and 1st defendant. The orders sought before the lower court are mainly geared towards the preservation of the substratum of the suit.

5. The lower court is yet to determine the rights of the parties as appertains to the suit land. And before this is done it is essential that status quo be maintained. It is for this reason that I find it necessary to state that the matter should be heard expeditiously.

6. I note that the applicant had not sought for an order for a stay of proceedings before the lower court and that being the case there was nothing to bar the magistrate's court from proceeding with the matter. However, the opening of a skeleton file when the original file is before this court may convolute the dispute further especially considering that this court appears to have handled case no. Meru ELC 54/2015. Against this background and having stated that the matter ought to be dealt with expeditiously and considering that the lower court file is here, and that the record of appeal has been filed, I find it expedient to give the following directions:

- 1) There be a stay of proceedings before the lower court in Nkubu PMC – ELC case no. 15/2019.
- 2) That this appeal be heard forthwith by way of oral or written submissions for the court to give a ruling date before 20.1.2020.
- 3) The application dated 4.10.2019 is hereby marked as spent.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT MERU THIS 9TH DECEMBER, 2019

IN THE PRESENCE OF:-

C/A: Kananu

Kiogora A. for appellant

Munene for respondent

1st appellant

HON. LUCY. N. MBUGUA

ELC JUDGE



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