



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAROK

APPEAL NO. 31 OF 2019

JAMES KAYIONI KAIKAI.....APPELLANT/APPLICANT

-VERSUS-

DANIEL LEURU KALASINGA.....RESPONDENT

RULING

The Appellant had by a Notice of Motion dated 28th November, 2019 sought for the following orders: -

- (1) Spent
- (2) Spent
- (3) That there be a stay of execution of the decree issued herein pending the hearing and determination of this application.
- (4) That there be stay of execution of the decree issued herein pending the hearing and determination of the appeal filed in the High Court.
- (5) That the costs of the application be provided for.

The application was based on the grounds that the appellant being dissatisfied with the decision and judgement delivered by Hon. Matutu Principal Magistrate Kilgoris has filed an appeal with high probability of success and he would be prejudiced if execution of the Judgement is enforced before the hearing of the appeal and that the appellant is ready and willing to be given such security that the court may direct. The Application was further supported by the affidavit of the appellant in which he depones that the appeal will be rendered nugatory and he stands the risk of loss in the event that the application is not allowed.

He further stated that the application was filed timely and there was no unreasonable delay on his part.

The application was opposed by the respondent by the way of grounds of opposition in which he states that the appellants have not enumerated the nature and/or the kind of loss that he will suffer and further that the appellant has not satisfied the grounds upon which the orders sought are granted and that the application is only meant

to delay and obstruct the due process.

I have considered the application before me and the appellant's submissions. This being an application for stay of execution, I will not delve into the merits of the substantive appeal at this interlocutory stage. The conditions of grant of stay of execution is now

well settled. A party must demonstrate that the appeal has an over whelming chance of success that there was inordinate delay on the part of the appellant to file the appeal and whether the appellant will suffer substantial loss in the event that the appeal is rendered nugatory.

In the instant application I find that the application for stay of execution and the Memorandum of Appeal were both filed on time and thus there was no inordinate delay on the part of the appellant to file the appeal which is an indication of the appellant's desire to have the appeal heard and determined expeditiously.

On whether the appeal has an overwhelming chance of success, I have perused the record of appeal and this can only be determined after the hearing of the appellant.

On whether the appellant will suffer substantial loss, the respondent has contended that the appellant has not enumerated or stated the nature of the loss he will suffer in the event that the orders sought are not granted, this is an appeal that involves ownership of a parcel of land in which the trial court has entered judgment for the respondent, the respondent can either dispose off the land and/or charge it to a third party in which case the appellant will be exposed to the loss in the event that the respondent take such action and in view of the above I find that the appellant risks loss to his detriment and therefore render the entire appeal nugatory and as such am satisfied that the appellant has satisfied the condition for grant of stay of execution.

The upshot of the above is that the Notice of Motion dated 28th November, 2019 is merited and I will allow the same. However, I direct that the Appellant do provide security of kshs. 300,000/- within 30 days of this ruling and in default the stay granted herein shall stand terminated.

DATED, SIGNED and DELIVERED in open court at NAROK on this 14th day of October, 2020

Mohammed N. Kullow

Judge

14/10/2020

in the presence of:-

Mr Langat holding brief for Mukoya for the appellant

N/A for the respondent



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