



REPUBLIC OF KENYA

IN THE ENVIRONMENT & LAND COURT AT KAJIADO

ELC CASE NO. 504 OF 2017

MAILUA ESTATES LIMITED.....PLAINTIFF

-VERSUS-

PUSHAN MIATO.....1ST DEFENDANT

SELEYIAN MIATO.....2ND DEFENDANT

KETUKEI MIATO.....3RD DEFENDANT

REUBEN OLE NAKUO.....4TH DEFENDANT

COUNTY LAND REGISTRAR, KAJIADO COUNTY.....5TH DEFENDANT

THE HON. ATTORNEY GENERAL.....6TH DEFENDANT

RULING

This ruling is on the Notice of Motion dated 28th March, 2019,

The motion is brought under **Order 42 Rule 6(1) and (4)** of the **Civil Procedure Rules** and it seeks a stay of execution pending the hearing and determination of an intended Appeal.

The grounds are that the Plaintiff was dissatisfied with the Judgement delivered on 26th February, 2019 and Intended to Appeal and execution would render the Appeal nugatory.

It is also the Plaintiffs' ground that the Intended Appeal has high chances of success and the Respondents will not suffer any prejudice.

The application is supported by an affidavit sworn by the Plaintiffs' Counsel which reiterates the grounds above.

Annexed to the affidavit are the following;

- (1) Notice of Appeal which is dated 11th March, 2019.
- (2) A letter to the Deputy Registrar dated 28/3/2019 forwarding copies of Decree for Certification.

(3) Affidavit of service dated 28/3/2019.

(4) Decree dated 26/2/2019.

The Application by the Plaintiff is opposed by the third Defendant Ketukei Miato who has sworn a replying affidavit dated 30/7/2019.

In the affidavit, the third Defendant says that the execution process has not begun, the appellant has filed a similar application at the Court of Appeal and that the Appellant should be compelled to deposit security for costs.

Annexed to the affidavit is a notice of motion filed in the Court of Appeal under **Rule 5(2) (b)** of the **Court of Appeal Rules 2010** dated 14/6/2019 and a supporting affidavit by Stephen Waigwa Murage of the same date.

In written submissions dated 15th March, 2020, the Defendants Counsel urges that the application is an abuse of Court process because of the similar application filed at the Court of Appeal and also because of absence of jurisdiction by this Court to order a further stay of execution.

I have carefully considered the entire application including the affidavits, annexures and written submissions.

I find that the application dated 28th March, 2019 has no merit for the following reasons;

Firstly, I find that the application has been urged more than 2 1/2 years after it was filed. Under **Order 42 Rule 6(2) (a)** there is unreasonable delay in prosecuting this application.

Secondly, the outcome of a similar application made to the Court of Appeal is unknown. The Plaintiff should have revealed to this Court the verdict of Court of Appeal so that we do not issue an order that conflicts with that of a Higher Court.

For the above reasons, the application dated 28th March, 2019 is dismissed with costs.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 9TH DAY OF DECEMBER, 2021.

M.N. GICHERU

JUDGE



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