

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 148 OF 2013

SAMUEL KIPTUI NGEIYWA.....PLAINTIFF

VERSUS

PATRICK KWALIA MOIKUT.....1ST DEFENDANT

PHILLIP LOCHOK EKAI.....2ND DEFENDANT

MATAYO NDILA CHEPROT.....3RD DEFENDANT

R U L I N G

1. The applicant filed a notice of motion dated 19/2/2015 in which he seeks stay of execution of orders deriving from the ruling delivered on 9/2/2015 pending the hearing and determination of the appeal filed herein. The applicant also seeks for costs of this application. The applicant contends that he has preferred an appeal against the ruling of this court delivered on 9/2/2015 and that if stay of execution is not granted, the appeal will be rendered nugatory.

2. The applicant further contends that he will suffer substantial loss if stay of execution is not granted. The second and third respondents have opposed the applicant's application based on grounds of opposition filed in court on 23/3/2015. The respondents contend that the applicant's application is misconceived as there are no orders capable of being stayed or executed. They further contend that the application is an abuse of process of court.

3. The applicant has brought this application under the Provisions of Order 42 Rule 6 of the Civil Procedure Rules. Order 42 Rule 6(2) gives conditions under which stay of execution should be issued. Firstly, the applicant must bring the application without unreasonable delay. Secondly stay cannot be granted unless it is demonstrated that the applicant will suffer substantial loss. Thirdly such security as the court orders for due performance of such order as may ultimately be binding on the applicant is given.

4. The issue for determination in this matter is whether the applicant has met the threshold set under Order 42 Rule (6) of the Civil Procedure Rules. The ruling being appealed against was delivered on 9/2/2015. This application was filed on 19/2/2015. I therefore find that there was no unreasonable delay in bringing the application. In considering whether the applicant will suffer substantial loss or not, it is important to bring out the nature of the ruling being appealed against. The applicant herein had filed a suit against the two respondents and one other individual. He sought injunctive orders against the three from evicting him from **Plot No. 5 Kitalale Settlement Scheme Phase 1**. He also sought injunctive orders against the three defendants from erecting any structures on the said plot. The applicant at the same time filed an application seeking temporary orders of injunction. The parties agreed that the application by the applicant be disposed of by way of written submissions. One of the issues for determination in the application was whether the suit filed herein was res judicata. The court found that the present suit was res judicata and dismissed the application as well as the main suit with costs. It is this ruling which the applicant seeks to have stayed pending appeal.

5. The court dismissed the applicant's suit with costs. There were no orders in this ruling capable of being stayed. If there was to be anything to be executed, it is only costs which have not been taxed. I do not therefore see any substantial loss the applicant will suffer if stay of execution is not granted. If the applicant is apprehensive that the respondents will execute, there is nothing in this matter to be executed. If any execution was to issue, it will issue in the former suit which rendered the current suit res judicata.

Stay of execution cannot be given in one file to benefit a party in a different suit. The applicant had appealed against the entry of judgment in the former suit. If he needed any stay, he should have filed the application for the same in the other file. I find that this application lacks merit. The same is hereby dismissed with costs to the second and third respondents.

It is so ordered.

Dated, signed and delivered at Kitale on this **24th** day of **June, 2015**.

E. OBAGA

JUDGE

In the presence of Mr. Onyancha for Mr. Kamunda for Applicant and Mr. Bungei for Mr. Ngeywa for 2nd and 3rd Respondent.

Court clerk – Isabellah.

E. OBAGA

JUDGE

24/6/2015