



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT ELDORET

ELC APPEAL CASE NO. E015 OF 2021

VERONICAH MENGICH Alias

KOBILO RUTO.....1ST APPELLANT

KIMATOR RUTO.....2ND APPELLANT

=VERSUS=

THE BOARD OF MANAGEMENT,

KOROTO PRIMARY SCHOOL.....RESPONDENT

RULING:

1. This is a ruling in respect a Notice of Motion dated 8th April, 2021 in which the Applicants seek the following orders:-

1. Spent

2. Spent

3. The court be pleased to grant a stay of execution on Kabarnet SPM ELC 11 of 2021 pending hearing and determination of the appeal against the Ruling made by the hon. Mr. Biwott SPM on the 7th of April, 2021.

4. The costs of this application be provided for.

5. Any other orders that meets the ends of justice.

2. The Respondent filed a suit against the Applicants at Kabarnet Senior Principal Magistrates Court. An application was made in that suit seeking exhumation of the remains of Paul Kipchabas Ruto from the suit property. The Respondent's application was allowed in a ruling delivered on 7th April, 2021.

3. The Applicants moved and filed an appeal against the said ruling. The Applicants contend that if stay of execution is not granted, the exhumation will go on and this will render the appeal nugatory.

4. The Applicants' application was opposed by the Respondent through a replying affidavit sworn on 26th April, 2021. The Respondent contends that the application has been overtaken by events in that the body of Paul Kipchabas Ruto has already been exhumed in accordance with the court order and that therefore the court cannot give orders in vain.

5. The parties were directed to file written submissions. The Applicants filed their submissions dated 30th June, 2021. The Respondent filed their submissions dated 25th June, 2021. I have considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicants' are entitled to grant of stay of execution.

6. This s an appeal from an interlocutory application. The suit before the lower court at Kabarnet is still pending. The Applicants were seeking to have stay of execution of the exhumation order which was given. The Respondent has deponed that the exhumation has already been carried out and there is therefore nothing to stay.

7. The fact that the exhumation has been effected is not denied. Infact, the submissions by the Applicants are on the main appeal. They do not mention the issue of stay. This being the case, this Court cannot grant orders in vain. I therefore find that the Applicants application is spent. The same is hereby dismissed with no order as to costs. As this is an appeal emanating from Kabarnet Senior Principal Magistrates court, the appeal should be heard by the Iten ELC court. This appeal is consequently transferred to Iten ELC court for directions on disposal of the appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 20TH DAY OF APRIL 2022.

E. OBAGA

JUDGE

Mr. Kipnyekwei for Respondent.

Court Assistant -Albert

E. OBAGA

JUDGE

20TH APRIL, 2022