



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA AT NAKURU

Civil Case 19 of 2006

JOHN K. LOKORIO.....PLAINTIFF

VERSUS

LEONARD WANYAMA .. 1ST DEFENDANT

ABSOLOM NDOLE.....2ND DEFENDANT

PATRICK KIMUNGICHI.....3RD DEFENDANT

JOHN EILA OMUGA.....4TH DEFENDANT

EKIRU ETAK.....5TH DEFENDANT

SAMSON OMUGA.....6TH DEFENDANT

MOSES OLE MUYA.....7TH DEFENDANT

MUTIALIENI JOHN.....8TH DEFENDANT

PETER EREKABO.....9TH DEFENDANT

AND

EDUNG EKALE & 133 OTHERS.....INTERESTED PARTIES

RULING

The applicants who have maintained that they have been in occupation of the suit land since 1995 were ordered, by this court in a judgment delivered on 30th September, 2011, to vacate it within 30 days from that date.

They have now moved the court to stay execution of those orders pending the hearing and determination of the appeal to the Court of Appeal. The applicants contend that they were aggrieved by

the judgment herein and have filed a notice of appeal to challenge it. In the meantime, they are apprehensive that the respondent may execute after the 30 days granted to the applicants to vacate.

In reply, learned counsel for the respondent and an auctioneer (John Muthee Ngunjiri) have sworn an affidavit to the effect that the applicants were evicted from the suit property on 5th November, 2011 and their settlements destroyed. The applicants through the 2nd applicant have denied this fact maintaining that an attempt to evict them was thwarted and are still in occupation of the suit property.

An order of stay will be granted if the court is satisfied that substantial loss may result to the applicants unless the order is made and the application for stay has been made without unreasonable delay. The applicants must also be ready to furnish security as may be ordered.

No doubt this application was brought timeously, approximately 1 month from the date of the judgment and bearing in mind that the applicants had 30 days to vacate.

Regarding substantial loss, the applicants have maintained that they have filed a notice of appeal to challenge their eviction and the entire judgment of this court. They have also deposed that they have crops on the land and children in school. If evicted, they have averred, they will suffer substantial loss, particularly if their appeal was to be allowed.

Balancing the applicants' right to appeal and the judgment in favour of the respondent, it is my considered view that justice will best be served by granting a stay to the applicants.

The applicants have been on the suit property for sometime.

From the respondent's application dated 21st December, 2011, it is apparent that the applicants are still on the suit property. They have no means of disposing of the property as the title is with the respondent.

For those reasons, I will grant an order of stay of execution in terms of paragraph 3 of the motion dated 8th November, 2011.

The court is alive to the status of the applicants and is of the view that asking them to furnish security would be punitive. I decline to order security.

Costs to be costs in the appeal. Orders accordingly.

Dated, Signed and Delivered at Nakuru this 2nd day of May, 2012.

W. OUKO
JUDGE