



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 45 OF 2019

SELLY JEPCHUMBA SAMOEI

(Suing on behalf of the Estate of the late

JOSEPH KISORIO SAMOEI.....1ST PLAINTIFF

DAVID KIMTAI MWEI.....2ND PLAINTIFF

JAMES KIMARU SONGOK.....3RD PLAINTIFF

WILLIAM SOME SONGOK.....4TH PLAINTIFF

VERSUS

KIMWEI ARAP SAMOEI.....DEFENDANT

RULING

The Application

1. The application dated 4/3/2020 and filed in court on the same date has been bought under **Section 1A, 1B, 3 & 3A, 63(e) and 79G** of the **Civil Procedure Act** and **Order 42 Rules 6(1), 2 and 6** of the **Civil Procedure Rules**. The defendant seeks the following orders:-

a. ...spent

b. ...spent

c. There be stay of execution and/or further execution of the orders emanating from the judgement delivered on 27/2/2020 in Kitale ELC No. 45 of 2019 and all subsequent proceedings in this matter be stayed pending hearing and final determination of the intended appeal.

d. Costs be provided for.

2. The application is supported by the affidavit of the defendant sworn on 4/3/2020. The grounds upon which the said application is made are that the applicant has preferred an appeal against the decision of this court which has a high probability of success, that the application has been made without unreasonable delay and that the applicant would be ready and willing to provide security.

The Response

3. The 1st plaintiff filed a replying affidavit sworn on 16/3/2020 and a further replying affidavit sworn on 13/11/2020. In the first affidavit she depones that the interment that had been sought to be halted by way of the suit had already been conducted; that this court has already made a judgment on the basis of ownership and only an appeal, if successful, can operate against that finding; that there is no intention to evict the applicant from the land and that the court declared the suit property family land and the applicant is part of that family and entitled to a portion thereof.

Submissions

4. The plaintiffs filed their written submissions on 20/11/2020. I have perused the file record and found no submissions filed on behalf of the

defendant.

Determination

5. Having examined the application before the court and the response at length, it is not disputed that the interment that had been sought to be halted by means of the suit has already taken place and that the land has already been registered in the name of the estate of the late Kipsongok Arap Chepkulei of which the applicant is one of the beneficiaries. His claim would in the circumstances not lie as against the respondents in person as they have evidently lack capacity after the registration of the estate as proprietor, and this court has reason to believe that the property is not in immediate likelihood of being disposed of in the circumstances save upon conduct of succession proceedings. Besides, orders of stay may only be issued against that which has not taken place and in the circumstances described above they can not obtain in this case at this point.

6. Consequently the application dated **4/3/2020** has no merit and the same is dismissed with no orders as to costs.

It is so ordered.

Dated, signed and delivered at Kitale via electronic mail on this 26th day of January, 2021.

MWANGI NJOROGI

JUDGE, ELC, KITALE.