



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**ELC MISC. APPL. NO. 18 OF 2020**

**SILAS MARUTI SIMIYU.....APPLICANT**

**VERSUS**

**PHILIP MANAMANA.....1<sup>ST</sup> RESPONDENT**

**CLARE NELIMA.....2<sup>ND</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion dated **13/10/2020** and filed in court on **16/10/2020** bought under **Section 3 & 3A** of the **Civil Procedure Act** and **Order 51 Rule 1 of the Civil Procedure Rules** the applicant seeks the following orders:-

**(1) That this honourable court be pleased to certify this application urgent and service of the same be dispensed with in the first instance.**

**(2) That this honourable court be pleased to issue an order directing that the Kitale Chief Magistrate's Court Land Case No. 57 of 2017 be stayed pending the hearing and determination of Kitale High Court Succession Cause No. 135 of 2014.**

**(3) That costs of this application be provided for.**

2. The application is supported by the affidavit of the applicant sworn on **13/10/2020**. The grounds on the face of the application are that the respondents herein filed **Kitale CM Land Case No. 57 of 2017** during the pendency of the **High Court Succession Cause No. 135 of 2014**; that the respondents had filed objection proceedings in the said succession cause and the succession court did hear their objection and it consequently enjoined them as administrators to the estate of the late **Clement Simiyu Manamana**; that the subject matter in the said two cases is **Plot No. 429 Kapkoi Settlement Scheme**, which can well be ventilated in the succession cause; that the respondents are seeking for orders of eviction against the defendants in **Kitale CM Land Case No. 57 of 2017**; that the applicant is the 1<sup>st</sup> defendant in the said land case aforesaid whereas he is also one of the administrators of the estate of their late father; that the said succession cause is pending confirmation; that the 1<sup>st</sup> respondent herein is the 1<sup>st</sup> defendant in the land case aforesaid; that **Kitale CM Land Case No. 57 of 2017** may proceed and the orders of eviction may be issued before confirmation of the grant; that to avoid duplicity of cases in court and save the court's time, it would be more apt if **Kitale HC Succession Cause No. 135 of 2014** was determined and which will bring the end of the dispute at hand between the parties herein.

3. I have perused through the court record and found no response to the instant application. I have also found no submissions filed on behalf of any of the parties.

4. The principal issue arising for determination in the instant application is whether this court should issue a stay of proceedings in a matter not pending before it, to wit, **Kitale CM Land Case No. 57 of 2017**.

5. Though this court exercises supervisory jurisdiction over the magistrates' courts, it should not appear to arbitrarily interfere with the proceedings before those courts save on appeal or on application in matters of transfer of suit. The applicant herein has not demonstrated that he has sought and been denied an order of stay of proceedings in the Chief Magistrate's court.

6. Ordinarily such an order of stay of proceedings would issue from this court only to preserve the suit from further proceedings pending an appeal against some order made in the trial court, or on appeal against denial of a stay order by the trial court.

7. It may be safely presumed that the trial court would in appropriate circumstances entertain and consider an application for stay of proceedings on its merits and possibly where necessary defer to the priority of a superior court suit on the same subject as the latter's decision would be binding on it. Where no such opportunity has been availed to the trial court to do so, there would be no good ground for approaching a superior court.

8. The necessary implication is that an order of stay of proceedings must first be sought in the trial court unless it is being sought pending appeal or as a substantive prayer on appeal.

9. Consequently I find that the application dated **13/10/2020** has no merit and the same is hereby dismissed with costs.

It is so ordered.

**Dated, signed and delivered at Kitale via electronic mail on this 17<sup>th</sup> day of March, 2021.**

**MWANGI NJOROGE**

**JUDGE, ELC, KITALE.**