



**REPUBLIC OF KENYA**

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

**ELC CAUSE NO. 323 OF 2017**

**FORMERLY KISII NO. 103 OF 2014**

**CHEMOIWA OLE SAYIELEL.....1<sup>ST</sup> PLAINTIFF/APPLICANT**

**MARIKULMURAN ENE SAYIALEL.....2<sup>ND</sup> PLAINTIFF/APPLICANT**

**-VERSUS-**

**JOSEPH SANTIAN.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**DOMINIC NUNA SANTIAN.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RICHARD NCHUUCHU SANTIAN.....3<sup>RD</sup> DEFENDANT/RESPONDENT**

**RULING**

The Applicant had by a Notice of Motion dated 17<sup>th</sup> January, 2019 sought for orders of stay of execution of the implementation and enforcement of the orders of the court delivered on 27<sup>th</sup> September, 2018 pending the hearing and determination of an Appeal filed. The Application was based on the grounds that the applicant had already preferred an Appeal against the ruling of the court and that the appeal has a high chance of success.

The Application was opposed by the respondent on the grounds that the applicants advocate is not properly on record and the suit herein was already determined by court and judgment already entered and further that the court had already determined the matter herein and the orders of the court have already been effected and hence the application has been overtaken by events.

I have considered the application before me from the record it is clear that this is an application that was filed by the firm of Ochengo-Onduso and Company advocates who came on record when the appeal was filed. The appellant was previously represented by the firm of Ogutu, Ochwangi, Ochwal advocates and this being an appeal it would have been proper for the firm of Ochengo-Onduso and company advocates to first seek for the leave of the court to file the instant Application. That having not sought for leave I thus find that the application before me is improperly before the court.

The respondent also contends that the application has been overtaken by events as the registrar has also implemented the order of the court as the boundaries of the land were fixed on 15/1/2019. This position has not been controverted by the applicants and in the circumstances, I find that there is no substance or order that the court can stay at this juncture.

The upshot of the above is that I find the application dated 17/1/19 was filed by an advocate who was not properly on record and that the application has been overtaken by events and in the circumstances I dismiss the application with costs.

**DATED, SIGNED and DELIVERED IN OPEN COURT at NAROK on this 5<sup>TH</sup> day of MAY, 2020.**

**Mohammed Kullow**

**Judge**

**5/5/2020**

In the presence of: -

CA:Chuma

Mr Tanyasis for Onduso for the Plaintiff

N/A for the Respondent

**Mohammed Kullo**

**Judge**

**5/5/2020**