



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT ELDORET

ELC NO. 112 OF 2014

AYABEI CHERUTICH.....PLAINTIFF

VERSUS

TAPNYABEI CHESARO.....DEFENDANT

RULING

1. This is a ruling in respect of Notice of Motion dated 1st November, 2020 in which the Defendant/Applicant seeks the following orders:-

1) Spent

2) Spent

3) THAT pending the hearing and determination of the intended appeal, this Honourable Court be pleased to issue an order restoring *status quo ante*.

4) THAT pending the hearing and determination of the intended appeal, this Honourable Court be pleased to stay any further execution of the impugned Judgment delivered on 24th September, 2018, the decree and all other consequential orders arising therefrom

5) THAT the costs of this Application be awarded to the Applicant.

2. The Applicant and the Plaintiff/Respondent are neighbours. The Applicant owns **LR NO.BARINGO/KAPROPITA/310** whereas the Respondent owns **LR NO.BARINGO/KAPROPITA/309**. The Respondent sued the Applicant claiming that the Applicant had encroached into his land by a portion measuring 0.2 hectares.

3. The case was fully heard and a judgment delivered in favour of the Respondent on 24th September, 2018. The Applicant was given 30 days within which to move out of the encroached portion failing which eviction was to issue. The Applicant did not move out of the encroached portion within the time given.

4. The Respondent moved the court for eviction orders through an application dated 23rd October, 2019. The application for eviction was allowed on 18th December, 2019. The Applicant was subsequently evicted in accordance with the court order.

5. The Applicant contends that she has preferred an appeal against the judgment delivered on 24th September, 2018 and that she did not apply for stay of execution because her Advocate and that of the Respondent had agreed to maintain the status quo until the appeal filed is heard and determined.

6. The Applicant argues that despite the agreement to maintain status quo, the Respondent went ahead to evict her from the encroached portion with assistance of hired goons. It is on this basis that the Applicant prays that this court orders that the status obtaining before the eviction be restored and that the court stays further execution of the decree in this matter.

7. The Respondent opposed the Applicant's application based on a replying affidavit sworn on 19th January, 2021. The Respondent contends that the orders which the Applicant cannot be granted as the Applicant has already been evicted from the encroached portion. The Respondent denies that there was an agreement to maintain status quo pending hearing and determination of the appeal.

8. The Applicant moved quickly and built a house for her son after the judgment was delivered. The Respondent argues that the Applicant was given several notices of execution which she failed to heed. The Applicant was finally evicted under the supervision of the OCS Kabarnet Police Station as per the court order and that the eviction was not carried out by hired goons as alleged.

9. The parties were directed to dispose of the application by way of written submissions. The Applicant filed submissions dated 4th May 2021. The Respondent filed submissions dated 15th November, 2021. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions filed by the parties. There are only two issues which emerge for determination. The first is whether this court should order that the status quo ante be restored and the second is whether there should be an order staying further execution of the decree herein.

10. I will deal with the two issues simultaneously. The Applicant has already been evicted from the encroached portion. If there is any further execution remaining, then it is on costs. Even if execution on costs was to issue, this will not prejudice or render the appeal nugatory. The Respondent will always refund the costs in the event that the Applicant succeeds in her appeal. Equally, if the Applicant succeeds in the appeal, the Applicant will simply move back to the portion where she was evicted from. There is therefore no need for restoration of the *status quo ante* and for stay of further execution.

11. For the reasons given hereinabove, I find no merit in the Applicant's application which is hereby dismissed with costs to the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 25TH DAY OF NOVEMBER, 2021.

E.O. OBAGA

JUDGE

In the virtual presence of:-

M/S. Borne for Plaintiff/Respondent

Court Assistant – Mercy

E.O. OBAGA

JUDGE