



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT HOMABAY

ELC CASE APPEAL NO. E009 OF 2021

1. ONYANGO ORIRI.....PLAINTIFF

2. AGNES ATIENO ORIRI & ANOTHER.....PLAINTIFF

VERSUS

1. BENARD ONYANGO OJWANG.....DEFENDANT

2. DANIEL ONYANGO OTIENO.....DEFENDANT

RULING

1. I have heard counsel for the respective parties herein regarding Notice of Motion dated 19/10/2021 where the applicants have sought.

2. In a 13-paragraphed replying affidavit sworn by the 1st Respondent on 18 November 2021 and filed herein on 23rd November 2021, the Respondents opposed the Notice of Motion. They sought dismissal of the same with costs.

a) Spent

b) Spent

c) Pending the hearing and determination of the appeal, the Honourable Court be pleased to grant an order for stay of execution of the Judgement of the trial Court delivered on 23rd September 2021 and all consequential orders and decree.

d) The Honourable Court be pleased to grant any such orders as may be deemed just and reasonable in the circumstances.

e) Costs of the application be provided for.

3. The parties having agreed to have the Notice of Motion comprised in terms of security vide deposit of title deed in respect of the suit land, Kasigunga/Kemreri/756 with court.

4. I am guided by Article 159(2), (b) and c of the Constitution of Kenya 2010, the decision in **Butt-versus -Rent Restriction Tribunal (1979) eKLR**. Further, **section 13(7) (a)** of the Environment Land Court Act, 2015(2011) governs preservation orders which include stay of execution order sought in the Notice of Motion.

5. A fortiori; I find and hold as follows.

(a) The Notice of Motion is merited and is hereby determined on terms that the applicants shall forthwith deposit title of the suit land which is the subject matter of this appeal, forthwith with this court as prayer 3 sought therein is granted accordingly.

(b) Costs of the Notice of Motion be costs in this appeal.

6. The appellants' counsel to file and serve the record of appeal within the next 21 days from this date.

7. Mention to confirm compliance and for directions on 25th January 2022.

8. The parties are applauded for their determination to have the Notice of Motion disposed of without any delay.

9. It is so ordered.

G.M.A ONG'ONDO

JUDGE

Ruling delivered, signed and dated at Homa-Bay this 22nd day of November 2021

In the Presence of;

Mr. Owaka holding brief for the Applicants' counsel, Mr. Otinga

Mr. H. Bunde learned for the Respondents

Court Assistant: Okello

G.M.A ONG'ONDO

JUDGE