



**REPUBLIC OF KENYA**

**IN THE LAND AND ENVIRONMENT COURT**

**AT ELDORET**

**CIVIL SUIT NO. 414 OF 2012**

**KIMUTAI LELEI.....PLAINTIFF/APPLICANT**

**VERSUS**

**HOSEA BITTOK.....1<sup>ST</sup> DEFENDANT/RESPONDENT**

**THE MANAGEMENT COMMITTEE KAPSARET**

**BONDENI SELF HELP GROUP.....2<sup>ND</sup> DEFENDANT/RESPONDENT**

**RULING**

This ruling is in respect of an application dated 28<sup>th</sup> April 2020 by the plaintiff/applicant seeking for the following orders:

- a) That there be a stay of execution of the orders of eviction made on the 25<sup>th</sup> February, 2020 in Eldoret ELC. No. 414 of 2012 Kimutai Lelei vs Hosea Kibitok & another pending the hearing and determination of Eldoret Court of Appeal Civil Application No. 9 of 2020 Kimutai Lelei vs Hosea Kibitok.
- b) That an injunction do issue against the 1<sup>st</sup> respondent restraining him whether by himself, his servants and/or agents from evicting the plaintiff or alienating or harassing him in the occupancy of land on PIONEER/NGERIA BLOCK 1(EATEC)113 pending the hearing and determination of Eldoret Court of Appeal Civil Application No. 9 of 2020 Kimutai Lelei vs Hosea Kibitok.
- c) THAT the costs of the application be provided for.

Counsel agreed to canvass the application by way of written submissions which were duly filed.

**ANALYSIS AND DETERMINATION**

This is an application for stay of eviction orders granted on 25<sup>th</sup> February 2020. The applicant herein had made an application for stay of execution of the judgment and decree which ruling was delivered on 10<sup>th</sup> December 2019 and the same was dismissed with costs to the 1<sup>st</sup> defendant

Eviction orders are by their very nature execution of a judgment and comprehensively covered under **Order 42 Rule 6**. This makes the court *functus officio* as the court had rendered itself on the same issue of stay of execution. The applicant can move to the next level of the hierarchy of courts. Trying to have a second bite of the cherry cannot work in the court that is *functus officio*. This application amounts to abuse of court process.

I have considered the application, the submission of counsel and will therefore not write an elaborate ruling on this issue as the record speaks for itself. I find that the application lacks merit and is hereby dismissed with costs to the 1<sup>st</sup> defendant/respondent.

**DATED and DELIVERED at ELDORET this 15<sup>TH</sup> DAY OF JULY, 2020**

**M. A. ODENY**

**JUDGE**