



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA**

**AT KITALE**

**SUCCESSION CAUSE NO. 260 OF 2006**

**IN THE MATTER OF THE ESTATE OF THE LATE EVANS KAMAU MWAURA- (DECEASED)**

**ESTHER GATHONI KAMAU & OTHERS.....APPLICANTS**

**VERSES**

**EVANS KAMAU MWAURA.....RESPONDENT**

**RULING**

1. The application by the Applicants dated 11th April, 2019 seeks orders that there be stay of the judgment of this court delivered on the 2<sup>nd</sup> day of April, 2019 pending the hearing and determination of the intended appeal to the Court of Appeal. The same is supported by the joint sworn affidavit of the Applicants.
2. They have essentially deponed that they stand to suffer loss if the stay is not granted as the Respondent may utilise the land and or deal with it so adversely that the appeal may be rendered nugatory.
3. The Respondent vide the replying affidavit sworn on the 9<sup>th</sup> May, 2019 has opposed the same arguing that he should be left to enjoy the fruit of the judgment and that this matter has taken a long time in litigation. He said that the Applicants in any case have not been in occupation of the suit land and they stand to suffer no loss. He urged the court to dismiss the same.
4. The court has perused the application as well as the written submissions on record which it does not intend to reproduce the same.
5. It is generally clear that the provisions of Order 42 (6) of the Civil Procedure apply namely, if there shall be substantial loss to be suffered if the application is disallowed, and that the same has been made without much delay.
6. Having heard this matter from the beginning and the evidence on board and the history with which it has gone through, I find that the application without doubt is meritorious. The court does not see any suffering by the Respondent since he has been in occupation of the suit land a fact admitted on record by the Respondent.
7. The question whether the appeal is meritorious is not for this court to determine as it has already rendered its verdict. It is therefore necessary that the matter is escalated upwards which I hereby allow.
8. There was the submission by the Respondent that the firm of Rutto & Kirui Advocates were not properly on record since they did not comply with the provisions of Order 9 rules 13 of the Civil Procedure Rules. I do not think this is true as the firm of Khaosa & Co. ceased acting for the Respondent after the judgment of this court was delivered and thus the Respondent had the right of seeking legal services elsewhere.
9. For the foregoing reasons, the application dated 11<sup>th</sup> April, 2019 is hereby allowed. There shall be stay of execution of the judgement of this court dated 2<sup>nd</sup> April, 2019 pending the hearing and the determination of the intended appeal.
10. The Respondent shall have the costs of this application.

**Dated signed and delivered in open court at Kitale this 23<sup>rd</sup> day of July, 2019.**

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**H K CHEMITEI**

**JUDGE**

**23/7/19**

**In the presence of;-**

**Oluoch holding brief for Njagua for the Applicant**

**None Appearance for the Respondent**

**Court Assistant -Kirong**

**Ruling read in open court.**