

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA

ELC CASE NO. 370 OF 2014

ANTHONY SISA MBAKAYA.....PLAINTIFF/RESPONDENT

VERSUS

PATRICK MAIKULA.....DEFENDANT/APPLICANT

RULING

The application is dated 23rd September 2019 and seeks the following orders:-

1. That this application be certified as urgent and heard expert at first instance. May this honourable court be pleased to order a stay of decree dated 29th March, 2019, pending the hearing and determination of this application.
2. That may the honourable court be pleased to make a finding that the intended eviction is not in good faith.
3. That may the honourable court be further pleased to order that the applicants be heard first.

It is based on the grounds that the applicant will suffer because he has no other land. That the applicant has a family that lives on this land and will suffer if evicted.

The respondent submitted that the applicant had also filed another application on the 18th June, 2018 through M/s. E.M. Masheti & Co. Advocates and the same was heard and determined. That the matters in issue herein is directly and substantially the same in the application dated 18th June, 2018. This application is res-judicata. That the judgment herein was delivered in open court on the 10th May, 2017 when the applicant herein was present, and he was given 6 (six) months to vacate. That the applicant was aware of the said judgment that is why his advocates on record by then filed an application for stay of execution dated 18th June, 2018. That the applicant's application dated 23rd September, 2019 has been overtaken by events as the eviction has already been ensued and the applicant no longer stays on the suit land. That the applicant herein had enough time to appeal against the judgment since the time it was delivered until the execution thereof was carried out on the 20th September, 2019.

This court has considered the application and the submissions therein. I have perused the court file. By a judgment dated 10th May 2017 this court ordered that the applicant be evicted from the suit premises after a period of six months. This court ruled on a similar application on the 26th September 2018. The applicant's application therefore lacks merit and is an abuse of the court's process and the same is dismissed with costs.

It is so ordered.

DELIVERED, DATED AND SIGNED THIS 30TH APRIL 2020

N.A. MATHEKA

JUDGE