



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT ELDORET**

**E & L CASE NO. 172 OF 2014**

**WILLIAM MACHARIA MAINA.....1<sup>ST</sup> PLAINTIFF**

**JOHN MUTHUI MAINA.....2<sup>ND</sup> PLAINTIFF**

**VERSUS**

**CHEBUTEI KOIN & ANOTHER.....DEFENDANT**

**AND**

**KIBIWOTT YATOR KURYASES & 8 OTHERS.....INTERESTED PARTIES**

**RULING**

This ruling is in respect of an application by the defendant/applicant dated 26<sup>th</sup> August, 2019 seeking for the following orders:

- a) That pending the inter parties hearing of this application there be stay of execution of the judgment, decree and all consequential orders herein.
- b) That at the inter parties hearing hereof the court be pleased to grant a stay of execution of the judgment, decree and all consequential orders hearing until the hearing and determination of the applicant's intended appeal to the Court of Appeal against the court's ruling delivered on 8<sup>th</sup> August 2019.

Counsel submitted that the applicant has preferred an appeal against the ruling dated 8<sup>th</sup> August 2019 dismissing the application dated 22<sup>nd</sup> March 2019. It was counsel's submissions that the intended appeal raises triable issues and shall be rendered nugatory in the event that the eviction orders are executed.

The respondents and the interested parties opposed the application through the grounds of opposition that the application though brought during the vacation has not complied with the provisions of the Judicature Act and is therefore a non-starter.

Counsel also submitted that the applicants had sought similar orders vide an application dated 22<sup>nd</sup> March /2019 which renders the current application res judicata against Section 7 of the Civil Procedure Act. They therefore urged the court to dismiss the application with costs.

**ANALYSIS AND DETERMINATION**

**This is an application seeking for stay of execution of judgment, decree and all consequential orders. It should be noted that the applicant had filed a similar application dated 22<sup>nd</sup> March 2019 which was argued exhaustively and a ruling delivered on 8<sup>th</sup> August 2019. The application sought for the following orders**

- a) Spent.
- b) A stay of execution of the judgment, decree and all consequential orders thereof pending the inter-partes hearing;
- c) The ex-parte judgment entered against the defendants/applicants be set aside at the inter partes hearing and the suit be set down for hearing on merits;

d) The costs be provided for.

**These are the same orders that the applicant is seeking for. This in effect means that the applicant wants the court to hear the same application with hopes of a different outcome. This would amount to abuse of court and further abuse of discretion.**

**The applicant being aggrieved by the ruling of the court, he ought to move to the next court to exercise his right of appeal. That is why there are hierarchy of courts. Siting on appeal on my own ruling or judgment when it is not a review under Order 45 is an abuse of court process. The court is functus officio in this matter and will not render another ruling on the application for stay of execution.**

**Having said that I find that the application is misplaced and therefore dismissed with costs to the plaintiffs and the interested parties.**

**DATED and DELIVERED at ELDORET this 23<sup>RD</sup> DAY OF APRIL, 2020**

***M. A. ODENY***

***JUDGE***