

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT

AT KAKAMEGA

ELC CASE NO. 256 OF 2017

JOHN A. KAROLI

JANE MMBONE AMALEMBA

JOSEPH MMEYWA AMALEMBA

THOMAS MBOYA AMALEMBA.....PLAINTIFF/RESPONDENTS

VERSUS

JOSEPH CHIBEYIA MAKAMU.....DEFENDANT/APPLICANT

RULNG

The application is dated 23rd December 2019 and is brought under section 1A of the Civil Procedure Act and order 51 rule I of the Civil Procedure Rules 2010 seeking the following orders;

1. That the honourable court be pleased to order the O.C.S Shinyalu Police Station to provide security in enforcement of the eviction order dated 13th September 2019.
2. Costs of this application be provided for.

This application is grounded on the annexed affidavit of Joseph Chibeyia Makamu and on grounds that judgement was entered against the respondents on the 9th May 2019 and they were given six months to vacate the suit land. To date the respondent are still in occupation of the suit land and they have refused to voluntarily vacate.

The respondent submitted that, being dissatisfied with the judgment and decree of this honourable court delivered on 9th April, 2019 and they filed a notice of appeal and applied and paid for a certified copy of the proceedings and judgment to enable us compile and lodge a record of appeal at the Court of Appeal which appeal is arguable. (Attached are copies of the notice of appeal, application for proceedings and the receipt for payment thereof, respectively marked "JAK 1", "JAK 2" and "JAK 3"). That that due to the volume of work at the court's typing pool, the proceedings and judgment applied and paid for are yet to be supplied to them to enable them compile a record of appeal but they still await them. That vide his application the defendant seeks to evict them from the suit land which will render them destitute as they have nowhere else to go and the eviction will negate their appeal and render it a mere academic exercise and they will be occasioned irreparable loss, damage, hardship and embarrassment and they pray that the defendant's application be disallowed pending their appeal.

This court has carefully considered the application and the submissions therein. Judgement was entered in this matter way back in May 2019 whereby the respondents were to vacate the suit land within six months from the date of the said judgement. There is no order of stay in this case and the respondent cannot disobey court orders by saying that they intend to appeal. I find this application is merited and I grant the same. However, due to the prevailing corona virus pandemic the orders will be stayed for the next 90 (ninety) days from the date of this ruling. The respondents will bear the costs of this application.

It is so ordered.

DELIVERED, DATED AND SIGNED AT KAKAMEGA THIS 23RD DAY OF JUNE 2020.

N.A. MATHEKA

JUDGE