

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 3 OF 2009

REUBEN NDARA.....PLAINTIFF

VERSUS

HELLEN CHEBET.....1ST DEFENDANT

FRANCIS K. TENDET

(Suing as legal personal representative

MAIBA CHEBOSI.....2ND DEFENDANT

RULING

1. The plaintiff is the applicant in the instant application. The application is dated **18/2/2020**. It seeks a stay of execution pending the hearing and determination of **Eldoret Civil Appeal No. 19 of 2019**. From that title it is clear that a substantive appeal has been filed against the decision of this court. The plaintiff avers that the defendants have commenced eviction proceedings and that he resides on the land with his family. He states that the respondent came to the suit premises on the **13th February 2020** and partially demolished his residential house. He has exhibited photographs of the demolition activity on the ground. He has also exhibited a copy of an avocado growing agreement dated **13/2/2019** between him and a firm called Habex Agro Ltd.
2. The 1st respondent filed a replying affidavit to the application on behalf of both respondents and averred that the applicant was evicted on the **13th February 2020** and that no property of the plaintiff is left on the suit land. She exhibits a photograph of the homestead allegedly taken on **21/2/2020** showing only rubble on the ground. She states that the application has been overtaken by events. She terms the agreement exhibited by the plaintiff as not genuine but “manufactured” after the judgment in order to defeat justice. She also states that her advocates have informed her that they have never been served with the record of appeal.
3. She further alleges that the applicant has stationed armed goons on the suit land to bar the defendants from taking possession of the suit land and has threatened violence against the deponent which she has reported to the police and obtained an OB number.
4. The plaintiff on the other hand responds to the defendants’ allegations through a further affidavit stating that his avocado plants are already grown and exhibits photographs of the same.
5. In this application I find that the appeal is already in place. I will not comment on the merits of the appeal which is now reserved for the determination of appellate court.
6. However I observe that though the applicant has been partially evicted by the total demolition of his dwelling house, there are avocado plants on the ground and this court is not able to find at this point as urged by the respondents that the agreement exhibited by the plaintiff was manufactured to defeat justice in this case. That too is property of the applicant which would go to waste in the event no stay was granted. There is no doubt that loss would be incurred, and of an irreversible nature if the plants were destroyed. The execution of that nature ought to be effected after the appeal which has been filed if that appeal is not successful.
7. The applicant had been on the suit land even as at the time of delivery of the judgment hence the application for a stay of execution, and the respondents have admitted this fact.
8. In the instant application since the applicant has demonstrated that he is serious about challenging the decision of this court in the Court of Appeal, the interest of justice lies in permitting him stay as he seeks the Court of Appeal’s opinion on the matter.
9. I find that the applicant’s application dated **18th February 2020** has merit and the same is granted in terms of **Prayer No. 2** thereof. The costs of the application shall be costs in the appeal.

Dated, signed and delivered at Kitale via electronic mail on this 27th day of July, 2020.

MWANGI NJOROGE

JUDGE, ELC, KITALE.