



**REPUBLIC OF KENYA**

**IN THE HIGH COURT OF KENYA AT KAKAMEGA**

**CIVIL CASE NO. 128 OF 2010**

**SHEM ASIRIGWA SHIPAKALI ..... PLAINTIFF**

**V E R S U S**

**DAVID AGAIRE OKOTO ..... 1<sup>ST</sup> DEFENDANT**

**TOM ASILIVWA MAZINZA ..... 2<sup>ND</sup> DEFENDANT**

**CHRISTOPHER MUDOGA ..... 3<sup>RD</sup> DEFENDANT**

**R U L I N G**

The application dated 12.7.2013 is seeking stay of execution of the decree herein pending the determination of the applicant's appeal before the Court of appeal. The application is supported by the applicant's affidavit sworn on the same date. The respondents filed a replying affidavit sworn by the 2<sup>nd</sup> respondent on the 25.11.2013.

Counsels for both parties relied on the application and the replying affidavit. The dispute herein involved an access road leading to the respondents' respective plots. The court ordered that the road passing through the applicant's land be established and some structures be removed. The applicant contends that he wishes to pursue an appeal to the Court of Appeal. The evidence showed that there was an access road as per the survey map. The applicant blocked the road when he combined another plot which he had purchased. I do recognize the applicant's right to pursue the appeal but at the same time the respondents are entitled to have the access road as per the court decree. The applicant maintains that the proceedings have not been typed to enable him pursue his appeal. I do order that the proceedings herein be typed and supplied to the applicant. I do grant stay of execution of the court decree for 90 days from the date hereof and thereafter the orders shall lapse. The applicant shall be free to obtain similar stay orders from the Court of Appeal. Each party to meet his own costs.

Delivered, dated and signed at Kakamega this 10<sup>th</sup> day of July 2014

**SAID J. CHITEMBWE**

**J U D G E**