



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAROK**

**ELC APPEAL NO. 17 OF 2020**

**SAMUEL NGOBOI KIRUSUA.....1<sup>ST</sup> APPELLANT**

**NICHOLAS TAJEWUO KIRUSUA.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**JOHN OLOKUYIA KAPIO.....RESPONDENT**

**RULING**

The Appellants/Applicants had by a Notice of Motion dated 26<sup>th</sup> May, 2020 and brought under Articles 159(2) of the Constitution of Kenya 2010, Section 1A,1B,3A,7,75(1) of the Civil Procedure Rules had sought for the following orders: -

1. Spent
2. Spent
3. That there be a stay of the order of the Principal Magistrate (Hon. R.M.Oanda) issued on 20/5/2020 directing the OCS Kilgoris Police Station to enforce the eviction of the Appellants pending the hearing and determination of this appeal.
4. That there be a stay of proceedings in Kilgoris Principal Magistrate's MCL & E Case No. 16 of 2018 **JOHN OLAKUYIA KAPIO-VERSUS-SAMUEL NG'OBOI KIRUSUA & ANOTHER**
5. That the costs of this application be provided for.

The application is based on the grounds that the appellants were dissatisfied and aggrieved by an order issued by the Principal Magistrate's Court Kilgoris directing their eviction which orders were mandatory exparte orders issued on 20/5/2020 without notice to the Appellants that may determine the dispute between the parties without the applicants having tendered their consequently render their appeal nugatory. The application was further supported by the affidavit of the 1<sup>st</sup> Appellant/Applicant in which he deponed that on 21/5/2020 he was served with an order directing the appellants eviction from LR Trans Mara/Olomismis/981 which was conclusive whereas there was another order issued by the High Court in Kisii directing the parties to maintain status quo and that they may not have a fair hearing before the Kilgoris Principal Magistrate's Court as the orders were given without according them an opportunity to be heard and consequently they are apprehensive that they may be evicted and hence their appeal rendered nugatory.

The application was opposed by the respondents by way of filing a replying affidavit. The respondents contended that the applicants/defendants were directed to confine their activities to a portion measuring 5 acres on the suit land. However, they had disobeyed the same. The respondents further contended that the applicants did not apply for the variation or review of the orders and as a result of the applicants' disobedience of the orders of the court an application for contempt was filed wherein the court had directed compliance and in particular the removal of offensive fences /structures erected by the appellants on contravention of the orders of the court.

I have considered the application before me the replying affidavit in opposition to the same and the submissions filed by the parties. In the instant application it is the applicants' contention that if they are not granted a stay of execution their appeal may be rendered nugatory. From the Affidavit in support of the application and the replying affidavit thereto it is clear that the orders that were issued were granted to ensure compliance of orders that were previously issued in Kilgoris SPMCC No. 89 of 2015 in which the Applicants herein were directed to confine all those activities on a portion measuring 5 acres on the suit land. however, it was after an application was filed by the respondents to have various structures removed from the suit land that the orders were made. From the above I find that the application dated 26/5/2020 lacks merit and the same is not related to the appeal that was filed and the orders sought have been overtaken by events and I consequently dismiss the same with costs.

**DATED, SIGNED and DELIVERED** in open court at **NAROK** on this **8<sup>th</sup>** day of **October, 2020**

**Mohammed N. Kullow**

**Judge**

**8/10/2020**

in the presence of: -

CA:Chuma

Mr Tanyasis holding brief for Mukoya for the Applicants

Mr Ogutu for the respondents

**Mohammed N. Kullow**

**Judge**

**8/10/2020**