



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET**

**E & L CASE NO. 42 OF 2015**

**RICHARD SATIA & PARTNERS.....1<sup>ST</sup> PLAINTIFF/RESPONDENT**

**JESTIMORE SIMWENYI.....2<sup>ND</sup> PLAINTIFF/ RESPONDENT**

**VERSUS**

**SAMSON SICHANGI.....1<sup>ST</sup> DEFENDANT/APPLICANT**

**EMMANUEL CHONGE SICHANGI.....2<sup>ND</sup> DEFENDANT/APPLICANT**

**RASMI WASILWA KICHOTI.....3<sup>RD</sup> DEFENDANT/APPLICANT**

**MOHAMMED WEKESA.....4<sup>TH</sup> DEFENDANT/APPLICANT**

**TOM SIRENGO.....5<sup>TH</sup> DEFENDANT/APPLICANT**

**WILLIAM KIRWA.....6<sup>TH</sup> DEFENDANT/APPLICANT**

**RONALD SICHANGI.....7<sup>TH</sup> DEFENDANT/APPLICANT**

**NICK SICHANGI.....8<sup>TH</sup> DEFENDANT/APPLICANT**

**JULIUS TIRIKOI.....9<sup>TH</sup> DEFENDANT/APPLICANT**

**DAVIS BARASA.....10<sup>TH</sup> DEFENDANT/APPLICANT**

**RULING**

**[NOTICE OF MOTION UNDER CERTIFICATE OF URGENCY DATED 13<sup>TH</sup> AUGUST, 2020]**

1. The 2<sup>nd</sup> to 10<sup>th</sup> Defendants/Applicants moved the Court through the Motion dated the 13<sup>th</sup> August, 2020 under Certificate of Urgency of even date, seeking for temporary order of stay of execution restraining the Plaintiff by himself, his agents and or his servants from interfering, evicting, damaging, wasting, alienating or transferring or in any other way interfering or in any other way interfering with the Applicants use, possession, and occupation of land parcel **L. R. No. 5335/24** situated in Endeless, pending the outcome of the ruling of 7<sup>th</sup> October, 2020 and that costs be provided for. The application is based on the four (4) grounds marked (a) to (d) on its face and is supported by the affidavit sworn by **Emmanuel S. Chonge** on the 13<sup>th</sup> August, 2020. It is the said Defendants'/Applicants' case that they have been in occupation of the suit land for over 45 years. That the Plaintiff had obtained eviction orders against the 1<sup>st</sup> Defendant who has since passed on. That the Plaintiff had filed an application to show cause against the Applicants who were never parties in this suit that was then pending ruling on the 7<sup>th</sup> October, 2020 and has written to the Regional Commissioner on 23<sup>rd</sup> June, 2020 for security during the execution of the eviction orders before the pending ruling could be delivered. That though the Applicants are not parties in this suit, they have **Kitale ELC No. 100 of 2018** commenced through originating summons that is pending.

2. The application is opposed by the Plaintiff through the replying affidavit sworn by **Wilson Walunywa Simwenyi** on the 24<sup>th</sup> September, 2020. It is the Plaintiffs' case that the application is res-judicata as similar applications for stay or injunction have been heard and determined before in this matter, its predecessor and **Kitale ELC No. 139 of 2014**. That the Applicants are cantankerous litigants who have abused the court's process and their application should be dismissed with costs. That the Applicants had been evicted from the suit land but are threatening to return on it. That the Applicants have been cited for contempt, and the court ruling is on the 7<sup>th</sup> October, 2020. That the

Plaintiffs are in possession of the suit land and that should be the status quo to be maintained.

3. The learned Counsel for the Applicants and Plaintiff filed their written submissions dated the 3<sup>rd</sup> October, 2020 and 5<sup>th</sup> October, 2020 respectively.

4. The following are the issues for the court's determinations;

**(a) Whether the prayers sought can issue at this stage as the ruling of 7<sup>th</sup> October, 2020 was delivered as scheduled.**

**(b) What orders to issue.**

5. Court has carefully considered the grounds on the application, the affidavit evidence by both sides, the written submissions by learned Counsel for both parties, the record and come to the following determinations;

(a) That the Motion dated the 13<sup>th</sup> August, 2020 has three (3) prayers marked 1 to 3 respectively. That prayer (1) was for the application to **"be certified urgent and heard on priority basis."** That prayer is now spent. That prayer 3 is for costs to be awarded to the Applicants while prayer 2 is for **"temporary orders of stay of execution..., pending the outcome of the ruling of 7<sup>th</sup> October, 2020."** That prayer 2 would have been relevant had the application been heard and determined before the delivery of the ruling then pending for 7<sup>th</sup> October, 2020 but not now.

(b) That the ruling that was pending for 7<sup>th</sup> October, 2020 related to the Plaintiffs' application dated the 21<sup>st</sup> January, 2020. That ruling was delivered as scheduled on the 7<sup>th</sup> October, 2020. That the moment that ruling was delivered, the Motion dated the 13<sup>th</sup> August, 2020 was overtaken by events as prayer 2 would be of no effect now, even if it was to be granted as phrased.

(c) That in the ruling of 7<sup>th</sup> October 2020, the Court among others observed that there was no evidence on how the 2<sup>nd</sup> to 10<sup>th</sup> Respondents, who are now the 2<sup>nd</sup> to 10<sup>th</sup> Applicants, were enjoined in this suit. That is an issue that has not been resolved to-date.

(d) That the 2<sup>nd</sup> to 10<sup>th</sup> Applicants moved the Court on 7<sup>th</sup> October, 2020 to extend the interim orders obtained earlier in respect of their Motion dated 13<sup>th</sup> August, 2020 dated without ensuring the prayer sought would be effective after the ruling that had been delivered shortly therebefore. That they should therefore pay the Plaintiffs' costs of the application.

6. That flowing from the foregoing, especially that the prayer for stay sought was to be in force pending the ruling only, which has already been delivered, the Motion dated the 13<sup>th</sup> August, 2020 is without merit, and is dismissed with costs.

Orders accordingly.

**Delivered virtually and dated at Eldoret this 25<sup>th</sup> day of November, 2020.**

**S. M. KIBUNJA**

**JUDGE**

**In the presence of:**

Plaintiffs/Respondents: Absent.

Defendants/Applicants: Absent.

Counsel: Mr. Bulbul for Dr. Chebii for 2<sup>nd</sup> to 10<sup>th</sup> Applicants.

Court Assistant: Christine

and the Ruling is to be transmitted digitally by the Deputy Registrar to the Counsel on record through their e-mail addresses.