



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 160 OF 2006

MARY WANGARE GICHUKI.....PLAINTIFF

VERSUS

JOHN KIARIE GICHUKI.....DEFENDANT

RULING

1. Judgment was delivered in this suit in favour of the plaintiff on the 24th September 2018. In the application filed on 9/10/2018 the defendant sought an order of stay of execution pending appeal on the grounds that the appeal shall be rendered nugatory should he be evicted and that he has a good appeal with a high probability of success.

2. **Order 42 rule 6(2)** of Civil Procedure Rules provides as follows:-

“(2) No order for stay of execution shall be made under sub rule 1) unless -

(a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

(b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant”.

3. The questions that arise from the application are whether there is an appeal, whether the application has been made without delay and whether substantial loss would result if the order of stay sought was not granted. Finally the court is to consider if there is any security offered for the due performance of the decree.

4. I am satisfied that there is a notice of appeal in place, it having been filed three days after the judgment on **27th September 2018**.

5. The application was filed on **9/10/2018** and I find that to be sufficiently expeditious action on the part of the applicant.

6. However no evidence of probable loss is exhibited by the applicant. I would have expected his supporting affidavit to be more detailed in this regard. It is not. The application must fail on this ground.

7. I have also noted that the issue of security has not been addressed by the applicant in that none has been offered.

8. The application dated **9/10/2018** has no merit and it is hereby dismissed with costs to the respondent.

Dated, signed and delivered at Kitale on this 28th day of January, 2019.

MWANGI NJOROGE

JUDGE

28/01/2019

Coram:

Before - Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Ms. Wanjala holding brief for Kraido for plaintiff

Mr. Karani holding brief for Munialo for applicant

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

28/01/2019