



**REPUBLIC OF KENYA**

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

**APPEAL NO. 8 OF 2018**

**JAMES KAIYONI KAIKAI.....APPELLANT**

**-VERSUS-**

**DANIEL LEURU KALASINGA.....RESPONDENT**

**RULING**

The Application before me is the Notice of Motion dated 22<sup>nd</sup> November, 2018 which was brought under Section 3A of the Civil Procedure Act and Order 42 (3) of the Civil Procedure Rules wherein the Applicant herein seeks a stay of proceedings in Kilgoris Principal Magistrate's Court ELC No. 21 of 2018 pending the hearing and determination of an intended Appeal before the court. The Application herein was based on the grounds that the Applicant is desirous to appeal against an order made on 1<sup>st</sup> November, 2018. The Kilgoris Resident Magistrate had dismissed an Application seeking to join a third party to the proceedings before the said court and that the suit will proceed and the intended Appeal be rendered nugatory.

The Application was opposed by the Respondent who had filed a replying Affidavit indicating that the third party against whom the Applicant wanted to enjoin was non-existent and allowing the said application will delay the hearing and determination of the suit and to buy the Applicants time to abuse the said suit land.

The Respondent contended that the Applicant is in occupation of the suit land and is only intent is to delay the further hearing of the matter and that the Applicant did not seek for leave to Appeal.

I have read the Application before me and the submissions made by the counsel for the parties and what is for determination in this appeal is whether the Applicant has satisfied the conditions of stay of execution pending the appeal. The intended Appeal is against the Ruling of the Senior Resident Magistrate and delivered on 1<sup>st</sup> November, 2018 in which the court declined to enjoin the group executive committee as a party to the suit herein.

I have looked at the pleadings save for the proceedings of the court from 17<sup>th</sup> July, 2018 to 9<sup>th</sup> October, 2018 and I have not seen the ruling against which the stay herein is based. Furthermore, the Applicant had the opportunity to seek for leave before the trial Magistrate but he chose to move to the court under the provisions of order 43 (I) in which he exercised his right of Appeal. However, I cannot be able to make a determination for the stay as the Appellant has not annexed a copy of the aforesaid ruling and for the above reasons the instant Application has no limbs to stand and I consequently dismiss the same with costs.

**DATED, SIGNED and DELIVERED in open court at NAROK on this 24<sup>th</sup> day of July, 2019**

**Mohammed Kullow**

**Judge**

**24/7/19**

In the presence of: -

Ms Adala holding brief for Ogutu for the appellant

N/A for the Respondent

CA:Chuma