



**REPUBLIC OF KENYA**

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

**AT ELDORET**

**E & L CASE NO. 203 OF 2016**

**JACOB WAWERU KIARIE.....PLAINTIFF**

**VERSUS**

**CHARLES KIPCHUMBA BIWOTT KIPUTIA.....DEFENDANT**

**RULING**

Application before me is dated 13<sup>th</sup> May, 2019 wherein the defendant prays for orders that the Judgment delivered on **7<sup>th</sup> December, 2016** be set aside. That there be stay of execution of orders of this court and the applicant be allowed to pay costs of Kshs.30,000.

The application is grounded on facts that the applicant was given conditional orders on 9<sup>th</sup> April, 2019. The applicant filed its defence, witness statement and list of documents but was unable to pay thrown away costs of Kshs.30,000 within time.

The applicant is ready, able and willing to pay the thrown away costs albeit outside the time limit set by court. The applicant has lived on the land for 52 years.

I have considered the application and do find that the land in dispute is 3.64 Ha. The value of the land far much surpasses the costs ordered to be paid to the respondent. The applicant cannot say that he lacks resources and yet he is in possession of 3.64 Ha. Court orders are to be obeyed by all and sundry.

However, in the circumstances of this case that the defendant is in possession and in view of the fact that the applicant is willing to pay the plaintiffs costs of the application, the application is allowed on condition that the applicant pays the respondents previous costs of Kshs.30,000 as ordered by court and costs of this application of Kshs.10,000, all amounting to Kshs.40,000 within the next 5 days failure of which the application stands dismissed. Orders accordingly.

**Dated and delivered at Eldoret this 23<sup>rd</sup> day of July, 2019.**

**A. OMBWAYO**

**JUDGE**