



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT**

**AT KITALE**

**LAND CASE NO. 103 OF 2007**

**ROBERT MUKARANI SIMITI.....1<sup>ST</sup> PLAINTIFF**

**JOSEPH WANDAKA.....2<sup>ND</sup> PLAINTIFF**

**FRED WANGILA.....3<sup>RD</sup> PLAINTIFF**

**VERSUS**

**PETER BADHIA.....1<sup>ST</sup> DEFENDANT**

**PETER WEKESA.....2<sup>ND</sup> DEFENDANT**

**ANN WEKESA.....3<sup>RD</sup> DEFENDANT**

**DR. TIMOTHY PIERCE.....4<sup>TH</sup> DEFENDANT**

**RULING**

1. This is a ruling on the application dated 2/7/2019 and filed in court on the same date. The application has been brought by the plaintiffs/applicants seeking for orders that there be stay of execution of the orders of this court pending the hearing and final determination of the appeal in the Court of Appeal. They also prayed for costs of the application be in the appeal.

2. The application is brought under **Section 1A, 1B and 3A** of the **Civil Procedure Act, Order 42 Rule 6 and 7, Order 51 Rule 1** of the **Civil Procedure Rules, Articles 40 of the Constitution of Kenya, 2010**.

3. The grounds on which the said application is made are stated on the bottom of the application. In summary they are that an appeal is pending before the court of appeal on this court's judgment delivered on 8/3/2017 dismissing the suit; that the typed proceedings have not yet been availed to the applicant; that a ruling on an application for execution was determined in favour of the defendants whereupon it was ordered the plaintiffs/respondents shall remove themselves from the suit land and that the defendants may execute the decree/orders of this court and have taken out a notice to show cause for the purpose and unless a stay of execution is granted the applicants stand to suffer substantial loss that cannot be compensated by way of pecuniary damages.

4. The application is supported by the affidavit of **Robert Mukarani Simiti** the 1<sup>st</sup> plaintiff sworn on 2/7/2019 which he swears on his behalf and of all the other plaintiff. That affidavit reiterates the same matters set out in the grounds above.

5. The defendants never filed any response to the application and the plaintiffs filed submissions on 30/7/2019 while the defendants filed none.

6. I have considered the filed submissions.

**Determination**

**Issues for Determination**

7. The issues that arise for determination in the instant application are as follows:

*(a) Has Order 9 rule 9 of the Civil Procedure Rules been complied with and is the application before court competent?*

*(b) Should the court issue an order of stay of execution sought pending appeal?*

*(c) What orders should issue?*

8. The issues are addressed as herein below:

**(a) Has Order 9 rule 9 of the Civil Procedure Rules been complied with and is the application before court competent?**

9. This is an issue that this court is entitled to raise *suo motu*. The firm advocates on the record for the plaintiffs at the time of delivery of the judgment was Kidiavai & Co. Advocates. They also filed notice of appeal on behalf. The advocates currently on record for the plaintiffs are Nyairo & Co. Advocates. No application for leave or consent as required by **Order 9 rule 9** is in the court record. I find that for that reason the application dated **2/7/2019** is incompetent for want of compliance with **Order 9 rule 9** of the Civil Procedure Rules. I hereby strike it out with costs to the respondents.

**Dated, signed and delivered at Kitale on this 30<sup>th</sup> day of September, 2019.**

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**

Coram:

Before: Hon. Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Bororio for Odwa for Plaintiff

N/A for Defendant/Respondent

**COURT**

Ruling read in open court.

**MWANGI NJOROGE**

**JUDGE**

**30/9/2019**