



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 169 OF 2013

FLORA CHERONO.....PLAINTIFF/RESPONDENT

VERSUS

MARY NJIHIA.....1ST DEFENDANT

GRACE ABENI2ND DEFENDANT

HAMISI SUMBA.....3RD DEFENDANT

WAWERU NYAGA.....4TH DEFENDANT

JOSEPH BARASA NYONGESA.....5TH DEFENDANT

THE LAND REGISTRAR TRANS-NZOIA.....6TH DEFENDANT

ABUBAKAR TEMBULA CHANGE.....7TH DEFENDANT

KESOGON MOSQUE COMMITTEE.....8TH DEFENDANT

RULING

1. The application dated **27/8/2019** and filed in court on **28/8/2019** has been brought by the 3rd defendant. It seeks an order of stay of execution of the judgment and decree herein pending hearing and determination of the intended appeal in the Court of Appeal. He also prays for costs to be in the cause.
2. The applicant has brought the application under **Section 3 and 3A Civil Procedure Act and Order 51 Rule 1 and Order 42(1) Rule 6 of the Civil Procedure Rules 2010**.
3. The grounds on which the said application is made are that the judgment in this matter was read and delivered by this court on **31/7/2019** and the applicant was dissatisfied with the said judgment; that the respondent intends to execute the said judgment; that the 3rd applicant has preferred an appeal to the Court of Appeal and has already filed a notice of appeal; that if a stay of execution is not granted substantial loss may result and render the appeal nugatory to the applicant; that the appeal has reasonable chances of success; that there is no delay in bringing this application and no one shall be prejudiced if the orders sought are granted.
4. The application is supported an affidavit of the 4th applicant dated **27/8/2019** which amplifies the above grounds.
5. The plaintiff/respondent filed grounds of opposition on **30/9/2019** opposing the application. The grounds the plaintiff relied on are that the application does not satisfy the requirements of granting of stay pending appeal in that no security has been provided and no substantial loss has been demonstrated; that the application is a ruse to protract this matter further by denying the responding from recovering his property and enjoying the fruits of her judgment; that the suit land is registered in respondent's name and that the applicant has not demonstrated that he has an arguable appeal. It is further stated by the respondent that the notice of appeal indicates that the applicant intends to appeal from the judgment of Hon. Justice Yano which is not the judgment delivered herein.
6. On the **3/10/2019** this court ordered the applicant to file submissions within **7 days** and the respondent to respond within **7 days** after service. The respondent filed his submissions on **14/10/2019**. I have perused through the court record and found no submissions filed on behalf of the applicant.

7. Where a court has ordered written submissions to be filed in an application and no oral submissions have been provided for that is the manner of proceedings which should dispose of the application and no other. If an applicant does not file submissions she should be considered not to have prosecuted the application in question. I find that to be the case in this matter as no submissions has been filed by the applicant. The applicant is in violation of the order of court issued on **3/10/2019**. For that reason the application dated **27/8/2019** is struck out with costs.

Dated, signed and delivered at Kitale on this 24th day of October, 2019.

MWANGI NJOROGE

JUDGE

24/10/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Onyancha for 3rd defendant/applicant

Mr. Kuria for 6th defendant

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

24/10/2019