



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KISUMU

ELC. CASE NO. 819 OF 2015 (FORMERLY KISUMU H.C.C.C. NO. 178 OF 2011)

LYSTON PAUL NGOYA MUSUMBA.....PLAINTIFF

VERSUS

THE CHAIRMAN OF THE COMMITTEE

MASENO SCHOOL FOR THE DEAF.....1ST DEFENDANT

THE SECRETARY OF THE COMMITTEE

MASENO SCHOOL FOR THE DEAF.....2ND DEFENDANT

RULING

1.The **chairman of the committee Maseno school for the deaf and the secretary of the committee Maseno school for the deaf the 1st and 2nd** defendants respectively have come to court by notice of motion dated 24/4/2019 seeking orders to be made under **order 9 Rule 9 and 10 and order 42 Rule 6 of the Civil Procedure Rules 2010** thus that the law firm of Bruce Odeny & Company granted leave to come on record in place of Staussi & Asunah Advocates for defendants/Applicants and an order of stay of execution of the Judgment and decree of the court dated 16/5/2018 pending hearing and determination of Kisumu Court of Appeal No. 20 of 2018.

2. The gist of the supporting affidavit sworn by Barrack Agunda Odhiambo is that the respondent has commenced execution process against the applicant and unless stay is granted the Appeal before the Court of Appeal shall be rendered nugatory. Moreover that the execution process is premature and that they are willing to abide by any condition or direction by the court to expedite the appeal.

3. The respondent reply is that the appeal shall not be rendered nugatory as the appeal is only in respect to costs. Moreover, that the defendant’s application is coming to court with unclear facts after organizing demonstration against implementing of the court order.

4. I have considered the application and the reply and rival submissions and do find that Judgment was delivered on 16/5/2018 when parties were directed to engage the services of the County Land Registrar and Surveyor to confirm ground boundary and upon confirmation, the defendants were to vacate the plaintiff’s land. The Application for stay of execution is made on 25/4/2019, after approximately 11 months.

5. I do find this to be inordinate delay. Moreover, the application is an afterthought only made to deny the Plaintiff the fruits of the Judgment as the same was made at the commencement of execution. The defendant ought to have moved the court expeditiously.

6. On the issue of substantial loss, the defendant has not demonstrated to the court the kind of substantial loss he will incur or suffer if the County Land Surveyor and County Land Registrar determine the boundaries between the two parcels of land and each party is directed to occupy the parcel of land whose title he holds. More over if he succeeds on appeal the same officers will be directed to redetermine the boundary. I do find the application without merit and is dismissed with costs. Orders accordingly.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE

DATED AND DELIVERED THIS 8th DAY OF NOVEMBER, 2019.

In the presence of:

Nyaribo for Odeny for the applicant.

Mr Orieyo for Bagada for the respondent.

A. O. OMBWAYO

ENVIRONMENT & LAND

JUDGE