



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 162 OF 2016

GRACE ZAKAYO LINYAMOI.....PLAINTIFF

VERSUS

WILSON LONAPA.....DEFENDANT

RULING

1. The application dated **10/9/2019** and filed in court on the same date has been brought by the defendant/applicant. It seeks an order of stay of execution of the decree issued herein on **31/7/2019** and all consequential orders pending hearing and determination of the intended appeal as well as costs.
2. The applicant has brought the application under **Order 42 Rule 6, Order 51 rule 1 of the Civil Procedure Rules 2010, Section 1A, 1B, 3, 3A, 3B and 63 (e) of the Civil Procedure Act, Cap 21 Laws of Kenya, Article 159 (2) of the Constitution of Kenya.**
3. The grounds are that a judgment was delivered herein against the applicant on **30/4/2019** and the decree issued on **31/7/2019**; that the plaintiff is in the process of evicting the defendant from the suit land having extracted an eviction order and served the same upon the OCS Kapenguria police station; that the defendant is aggrieved by the said judgment and decree and has preferred an appeal against the said judgment and decree having already filed a notice of appeal; that the intended appeal has high probability of success; that the plaintiff's threat of eviction of the defendant from the suit land exposes the applicant irreparable loss and render the object this application and of the intended appeal nugatory; that this application has been made without any unreasonable delay and that the applicant is willing to deposit such security as this court may order.
4. The application is supported an affidavit of the defendant dated **10/9/2019**.
5. The plaintiff filed grounds of opposition on **1/10/2019** opposing the application. His grounds are that the application has been presented by counsel who is not properly on record; that the application offends the mandatory provisions of **Order 9 Rule 9 and 10** of the Civil Procedure Rules 2010 and that the application is a gross abuse of the due process of the court and ought to be struck out with costs.
6. None of the parties including the defendant/applicant has filed any submissions as ordered by the court on **3/10/2019** and **24/10/2019**. This court in earlier times observed that when an order of filing of submissions in respect of an application has been made and an applicant fails to comply therewith and no other mode of disposal of the application, say by way of oral submissions or pure reliance on documents filed the application cannot be deemed to have been prosecuted. The same position applies in respect of application dated **10/9/2019**. The same is struck out with costs.

Dated, signed and delivered at Kitale on this 7th day of November, 2019.

MWANGI NJOROGE

JUDGE

7/11/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Picoty

Mr. Magut holding brief for Teti for plaintiff

N/A for the defendant

COURT

Ruling read in open court.

MWANGI NJORGE

JUDGE

7/11/2019