



REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KITALE

LAND CASE NO. 107 OF 2012

FRED K. SABAL.....1ST PLAINTIFF
RICHARD KIPSOI.....2ND PLAINTIFF
DANIEL KAPKARA.....3RD PLAINTIFF
DANIEL CHEMAKET.....4TH PLAINTIFF
ELIUD SICHEL.....5TH PLAINTIFF

VERSUS

DISTRICT LAND ADJUDICATION &

SETTLEMENT OFFICE, TRANS-NZOIA.....1ST DEFENDANT
THE ATTORNEY GENERAL.....2ND DEFENDANT
PETER CHEMASWET.....3RD DEFENDANT
NATHAN JINDET NDIWA.....4TH DEFENDANT
JAMES BOIYO BELLO.....5TH DEFENDANT
ROBINSON CHESBOI.....6TH DEFENDANT
BARNABA K. KITEYWO.....7TH DEFENDANT
WILFRED M. CHEPROT.....8TH DEFENDANT
JUMA WILLIAM CHEMOSIT.....9TH DEFENDANT
PETER KIBARAK KIBET.....10TH DEFENDANT
JOHN KAPKARA MASAI.....11TH DEFENDANT
STANLEY KIPKOECH.....12TH DEFENDANT

RULING

1. The application dated **12/3/2019** and filed in court on **12/3/2019** has been brought by the 2nd, 3rd, 4th and 5th plaintiffs/applicants who seek an order of stay of execution of the decree herein and all consequential orders arising therefrom pending the full compliance with the provisions of **Section 152E** of the Land Act and the hearing and determination of the intended appeal against the decision of this court delivered on **31/1/2019**. They also seek that the costs of and incidental to this application be provided for.

2. The application is brought under provisions of **Order 42 rule 6 of the Civil Procedure Rules 2010, Section 1A, 2A and 3A of the Civil Procedure Act and under the Environment and Land Court 2011, under the Land Act, 2012, the Constitution of Kenya 2010.**

3. The grounds on which the said application is made are that the judgment delivered by this court on **31/1/2019** resulted in a mandatory injunction requiring the applicants and their families to vacate the suit lands in **Kitalale Settlement Scheme Phase 11** in default of which they will be evicted; that certain procedures applied to the extracting of the decree which the respondents have not adhered to and that the respondents have commenced preparations for eviction and the applicants are therefore at risk of being subjected to illegal execution and serious prejudice as they have invested their entire savings on the suit premise; that an appeal has been preferred which has high chances of success; that the applicants have been in occupation and use of the disputed properties since **1996** and the same was confirmed by the District Commissioner Trans-Nzoia in a certain letter; that the applicants have exercised diligence and brought their application expeditiously.

4. The application is supported by the affidavit of the 2nd plaintiff/applicant sworn on **12/3/2019**. That affidavit reiterates the same matters set out in the grounds above.

5. There was no response to that application on the part of the respondents. No submissions were filed by any of the parties despite the order of the court dated **30/9/2019**. However on **31/7/2019** Mr. Wanyama for the applicants appeared before the court and urged the court to grant the application as it was unopposed.

6. Is there an appeal on record? **Exhibit RK3 (a)** to the supporting affidavit is a notice of appeal apparently filed on **13/2/2019**. For the purposes of **Order 42 rule 6(4)** there is therefore an appeal in place.

7. Further, I have considered the instant application, the supporting and the annexures. In particular annexures **No. RK6 (a)** and **6(b)** show that the applicants are in occupation of the suit properties and that they have conducted some permanent and temporary developments thereof. I am therefore satisfied that if eviction were to issue before the appeal is finalised they might suffer substantial loss.

8. As to whether the application has been brought before court with sufficient expedition I do note that judgment was delivered on **31/1/2019** and the instant application was filed on **13/3/2019**, that is, after a period of **one month and 12 days**. I do not find this to be inordinate delay. In any event the applicants have explained that this court granted a **45 day** stay of execution which had not lapsed by the time they moved this court formally for a stay of execution pending appeal vide the instant application. That delay though minor has been sufficiently explained by the existence of an order of stay.

9. Regarding security, this court has discretion to make appropriate orders in an application for stay. In the application the applicants have indicated they are willing to abide by any conditions set by this court for grant of the orders sought. I find that an order for security for costs of the intended appeal would be adequate to safeguard the interests of the respondents pending appeal.

10. As a condition for grant of stay of execution pending appeal. I therefore order that the applicants shall:-

(a) Deposit the sum of Kenya Shillings Three Hundred Thousands Only (Kshs.300,000/=) being security for costs in the appeal in an interest earning account held jointly by the counsel for the applicants and counsel for the respondents within 45 days of this order.

(b) File the record of appeal and serve it upon the respondents within 45 days of this order.

11. In default of compliance with the above conditions the stay of execution order hereby granted shall automatically lapse. The costs of this application shall abide the decision in the intended appeal.

Dated, signed and delivered at Kitale on this 11th day of December, 2019.

MWANGI NJOROGE

JUDGE

11/12/2019

Coram:

Before - Mwangi Njoroge, Judge

Court Assistant - Collins

Mr. Wanyama for 2nd - 5th plaintiffs

Mr. Teti holding brief for Ngeywa for 3rd - 6th defendants

COURT

Ruling read in open court.

MWANGI NJOROGE

JUDGE

11/12/2019.