

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 691 OF 2012

(Formerly Hccc No. 35 of 2011)

KIPLAGAT KOTUT.....PLAINTIFF

VERSUS

ROSE JEBOR KIPNGOK.....DEFENDANT

RULING

Kiplagat Kotut (hereinafter referred to as the applicant judgment debtor) has sued **Rose Jebor Kipngok (hereinafter referred to as respondent decreeholder)** in application dated 15.12.2016 seeking orders that there be an order of stay of execution of the decree issued in this matter to the extent that the respondent to observe and maintain the present status quo where the respondent be restrained from evicting the plaintiff from the suit land being **Plateau/Plateau Block 2(Uasin Gishu)/63** until Environment Court Case No. 195 of 2016 is heard and determined.

The application is premised on Order 22, Rule 25 and Order 51 of Civil Procedure and Section 3, 3A of the Civil Procedure Act. The basis of the application as deponed in the affidavit of Kiplagat Kotut is that he has filed a suit for compensation being Eldoret Environment and Land Court No. 195 of 2016. Moreover, that the suit property has changed hands and is currently registered in the names of Kipchirchir Chumba who is not a party to the proceedings.

The respondent filed grounds of opposition whose import is that the plaintiff instituted this suit seeking for specific performance and a vesting order in his favour. The suit proceeded to full hearing with the participation of the plaintiff and the defendant and judgment was pronounced on 27th November, 2014 whereupon the Honourable Court dismissed the plaintiff's claim. That decree holder was granted 30 days from the date of the judgment to vacate the Suitland. The judgment debtor lodged an appeal in the Court of Appeal against the judgment of this Honourable Court vide Eldoret Civil Appeal No. 31 of 2015 which was dismissed with costs to the Decree holder/Applicant upon hearing vide judgment dated 14th June, 2016. The respondent has blatantly refused and disobeyed to vacate from the suit land despite being served with the judgment and final decree of this Honourable Court and notwithstanding the dismissal of his appeal. According to the respondent, the Honourable Court ordered the judgment debtor vide ruling dated 20th November, 2015 to furnish security whose value is at least Kshs.1,600,000 as conditional stay of execution of the judgment and decree of this Honourable Court pending the hearing and determination of the aforesaid appeal.

I have considered the application and the grounds of opposition and do find that this is a very convoluted matter, very circuitous and bordering on abuse of court process and therefore should be brought to an end. The judgment debtor's appeal in the Court of Appeal against the judgment of this Honourable Court vide Eldoret Civil Appeal No. 31 of 2015 has been dismissed. The Suit No. 195 of 2016 between the judgment debtor and the decree holder has been struck out and therefore, there is no basis for the application. Moreover, the suitland is being claimed by a 3rd party who is alleged to have bought the land from the judgment debtor. The litigation herein ought to be brought to an end. The upshot of the above is that the application is dismissed with costs to the respondent.

Dated and delivered at Eldoret this 2nd day of March, 2018.

A. OMBWAYO

JUDGE