

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

E.L.C. CASE NO. 531 OF 2010

CHELAGAT NASES NJAKAL.....PLAINTIFF

VERSUS

TELEPOSTA PENSION SCHEME.....1ST DEFENDANT

NORAH CHELAGAT.....2ND DEFENDANT

AMOS K. KALE T/A STEVE BUNDOTICH & CO. ADVOCATES.....3RD DEFENDANT

KALE MAINA & BUNDOTICH ADVOCATES.....4TH DEFENDANT

ERNARD MAINA T/A KALE MAINA & BUNDOTICH ADVOCATES.....5TH DEFENDANT

RULING

In the application dated 9/11/2017, the 2nd Defendant seeks stay of execution of the judgement and decree delivered on 11/10/2017 pending hearing and determination of her appeal. The application is made on the grounds the 2nd Defendant being dissatisfied with the entire judgment and decree of this court, has appealed to the Court of Appeal and that eviction orders have been issued against her. She urged that the appeal will be rendered nugatory if the Plaintiff is allowed to proceed with execution. She contends that she has an arguable appeal with high chances of success and has been in possession of the Suit Property close to 30 years.

The Plaintiff opposed the application on the grounds that there is no valid Notice of Appeal since the purported notice was lodged in court on 8/11/2017 yet the judgement was delivered on 10/10/2017. Secondly, the Plaintiff contends that the applicant did not follow the procedure in Order 9 of the Civil Procedure Rules on what should be done where a party changes advocates after judgement. The Plaintiff also contends that the applicant has failed to furnish security for the due performance of the decree.

The court found that the Plaintiff was entitled to an order of specific performance of the agreement dated 27/9/2007 and mesne profits of KShs. 15,000/= per month from 1/11/2007 until the Plaintiff is given vacant possession of the Suit Property by the 2nd Defendant.

The court is not satisfied that substantial loss may result to the 2nd Defendant unless the order of stay is made. The Applicant has failed to furnish security for the due performance of the decree or order that may ultimately be binding on her. The application dated 9/11/2017 is dismissed with costs to the Plaintiff.

Dated and delivered at Nairobi this 25th day of September 2018.

K. BOR

JUDGE

In the presence of: -

Mr. Nderitu for the Plaintiff

Ms. Muchui holding brief for Ms. Gachuru for the 1st Defendant

Mr. Odera holding brief for Mr. Mokaya for the 2nd Defendant/Applicant

Mr. V. Owuor- Court Assistant