



**REPUBLIC OF KENYA.**

**IN THE HIGH COURT OF KENYA AT BUNGOMA.**

**LAND AND ENVIRONMENT CASE NO. 93 OF 2014.**

**FLORENCE NAFULA WAFULA.....PLAINTIFF**

**VERSUS**

**EVANS CHETAMBE WAFULA.....1<sup>ST</sup> DEFENDANT**

**WILSON WALUBENGO WAFULA.....2<sup>ND</sup> DEFENDANT**

**RULING**

[1]. The applicant by a Notice of Motion dated 15<sup>th</sup> December prays for a stay of execution of the decree herein and all other consequential orders and that the exparte Judgment made on 12<sup>th</sup> November 2015 be set aside, reviewed and or be discharged unconditionally.

[2]. The application is premised on the grounds that the case was heard in the absence of the defendants and that the defendants were never served with a hearing Notice. That the Auctioneer did not serve a proclamation notice before attaching the defendants animals.

[3]. The application was opposed. The respondent argued that the defendants were duly served with a hearing notice on 6/7/2015 and they did not attend the Court. It was argued that the defendant were duly served with a hearing notice on 6/7/2015 and decided not to attend the court. That Supporting Affidavit is filed and it is in the court file. It was argued for the respondent that the applicant's affidavit is full of falsehoods since the applicant was served with the pleadings and he filed a defence. That in any case, the execution has taken place and so there is nothing to stay.

[4]. This application is clearly without merit. The applicant was duly served as evidenced by the affidavit filed in the court file. Execution has taken place, the applicants grounds supporting the application admit that execution has taken place. The court cannot stay what has already taken place. The application is clearly not merited. The same is dismissed with costs.

Judgment read in open Court.

**DATED at BUNGOMA this 23<sup>rd</sup> day of May, 2017.**

**S. MUKUNYA**

**JUDGE.**

**In the presence of:**

Joy/Gladys: Court Assistant

Parties are absent

They were served

R/S filed.