

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E & L CASE NO. 608 OF 2012

ALICE JEPKOECH YANO.....1ST PLAINTIFF

JOSEPH KIPCHUMBA YANO.....2ND PLAINTIFF

JOYCE CHEPKOECH SIROR.....3RD PLAINTIFF

VERSUS

SAMSON KIPROP.....1ST DEFENDANT

WILSON KIPNG'ETICH.....2ND DEFENDANT

BENJAMIN LANGAT.....3RD DEFENDANT

HILLARY KIPKEMBOI RONO.....4TH DEFENDANT

PHILIP KIPROTICH SEREM.....5TH DEFENDANT

GEORGE LELEI KIPKEMBOI.....6TH DEFENDANT

WILSON KIPLAGAT.....7TH DEFENDANT

RULING

Salim Seif Ambunya Andanje has come to court on his behalf and on behalf of 23 others seeking a stay of execution of orders made on 5.3.2015, 18.11.2015 and 26.4.2016. The application is based on grounds that the applicants are the original occupants and have been in occupation for 30 years and that they were never enjoined in the suit and that the eviction orders are against non-parties. That they are squatters who were moved to the suit land awaiting resettlement. The plaintiff/respondent filed a Notice of Preliminary Objection that the application is bad in law and incurably defective and that it raises no reasonable cause of action. Further, that the applicants lack locus standi and the application is an abuse of court process.

I have considered the application, the preliminary objection, submissions by the applicant, submissions by the respondent and do find that judgment was entered on 5.3.2015 against the defendants. The defendants appear to have rested on their laurels in challenging the judgment. The objectors/applicants herein have come for stay of execution pending the hearing of the application. I have heard the application but there is no prayer for review of judgment, and that there is no appeal lodged by the objectors/applicants. In my view, stay of execution can only be granted under Order 42, Rule 6 of the Civil Procedure Rules Cap 21 Laws of Kenya pending appeal or under Order 45 of the said rules pending application for review. There is neither appeal nor application for review pending and therefore the application has no basis. The applicant's should have filed a separate suit as their claim is not connected with the defendants claim. The application is dismissed with costs.

DATED AND DELIVERED AT ELDORET THIS 28TH DAY OF JUNE, 2017.

A. OMBWAYO

JUDGE