



**REPUBLIC OF KENYA**

**ENVIRONMENT AND LAND COURT AT KITALE**

**ENVIRONMENT & LAND CASE NO. 122 OF 2012**

**ESTATE OF SYLVESTER KIMAGUT SANG REPRESENTED BY**

**JENNIFER CHEBET SAWE.....PLAINTIFF**

**VERSUS**

**JANE JEPTOO SAWE:.....DEFENDANT**

**RULING**

1. The applicant Jane Jeptoo Sawe filed a notice of motion dated 3.8.2015 in which she sought maintenance of the status quo until an application for stay of execution she intends to file in the court of appeal is heard and determined. The application is expressed to be brought under the provisions of section 3A, 3, 1A and 1B of the civil Procedure Act.
2. The applicant had been sued by Jennifer Chebet Sang representing the estate of Sylvester Kimagut Sang for a declaration that the estate of Sylvester Kimagut Sang was the sole proprietor of LR. NO. Kaplamai/Kachibora Block 2/Mateket/95 and that the applicant should voluntarily move out of the land failing which she be evicted. The applicant has been utilizing the land since 1983.
3. The respondent succeeded in her claim in a judgement delivered on 5.5.2015. The respondent thereafter commenced the process of executing the decree given in her favour. An eviction order was issued by the Deputy Registrar of the court on 31.7.2015. This is the order which triggered the filing of this application.
4. The applicant contends that she has filed an appeal to the court of appeal against the judgement of 5.5.2015 and that she intends to file an application for stay of execution in the court of appeal. That is why she wants an order of maintenance of status quo pending the hearing and determination of the intended application. She contends that she is residing on the suitland and has done extensive developments on the land and that if an order for maintenance of status quo is not granted, she risks losing her developments if she is evicted. She claims that she has no other place to go to apart from the suitland.
5. The applicants's application is opposed by the respondent through her replying affidavit sworn and filed in court on 25.9.2015. The respondent contends that the applicant's application has been brought balatedly and that the applicant has not demonstrated that she will suffer substantial loss. The respondent contends that the applicant does not reside on the suitland. She resides on LR. No. Kaplamai/Kachibora block 2/Mateket/103.
6. The applicant has since engaged in cutting down trees on the suit land thus wasting it. The respondent states that she is not intent on disposing of the land which is in her husband's name and that she should not be denied from enjoying the fruits of her judgement. She further contends that the applicant has not offered any security and that her application should be rejected.
7. In a further affidavit, the applicant contends that the orders of eviction will not have been directed

- to her if she was not residing on the suitland. She has annexed a photograph of a mud walled structure covered with an iron sheet roof.
8. I have considered the applicant's application as well as the opposition to the same by the respondent. I must point out from the beginning that the applicant's application is not for stay of execution. It is for maintenance of status quo under the inherent powers of the court. It was not brought under order 42 of the Civil Procedure Rules and as such I will not address myself on the conditions under that rule such as delay, substantial loss and security.
  9. The applicant wanted the status quo to be maintained. The orders were granted ex-parte on 4.8.2015. They were subsequently extended on 12.10.2015 and again on 3.11.2015 until ruling in this application. The applicant is not being truthful when she says that the suitland is her only source of livelihood. During the hearing of the main suit, she gave evidence that she does not reside on the suitland. She stated that it was her son who was on the land. It is therefore not correct to state that that is where she has been residing. Typed proceedings and judgement were ready as from September 2015. She should have filed her application in the court of appeal by that time. There is certificate of delay issued on 18.9.2015. If indeed the applicant was serious with pursuing her appeal in the court of appeal, she should have even filed an application for stay in the ELC court.
  10. The applicant seems to be out to delay the execution process. She has embarked on cutting down the trees growing on the land. The plaintiff/deed holder is entitled to enjoy fruits of her judgement. I find that the applicant's prayer for maintenance of status quo is not merited. Her application is hereby dismissed with costs to the respondents. The orders of maintenance of status quo are hereby discharged following the dismissal of the applicant's application.

It is so ordered.

Dated, signed and delivered at Kitale on this 25th day of January, 2016.

**E. OBAGA**

**JUDGE**

**COURT** - Ruling delivered at 2:50 pm in the absence of parties who were aware of today's date. Court Assistant - Isabellah.

**E. OBAGA**

**JUDGE**

**25/1/2016**