



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT AT BUNGOMA**  
**ENVIRONMENT AND LAND COURT**  
**CIVIL CASE NO.49 OF 2009 (O.S)**

**FREDRICK MAKOKHA.....APPLICANT**

**VERSUS**

**PETER SIFUNA WASINA            )**

**JOHNSTONE MAKETA WASWA        )**

**WANGILA WASWA                    ).....RESPONDENTS**

**RULING**

[1] The applicant herein filed an application under Section 1A 3,3A and 63e of the Civil Procedure Act and order 42 Rule 6(1) (2) 6 of the Civil Procedure Rules. He prays for a stay of execution of the decree herein pending the determination of Eldoret Court of Appeal No.23 of 2015.

[2] The applicant supported his affidavit by an affidavit of one Francis Makokha. He relied on that affidavit and stated that the applicant is on the land. Further that the appeal has high chances of success. They argued that if the order is not granted, their appeal will be rendered nugatory.

[3] The respondent opposed the application through an affidavit of Maketa Waswa sworn on 15.11.2015. It was argued that the applicant had not established conditions for stay. That there was no substantial loss shown that was to be suffered by the applicants. That the applicants are in occupation and that they would suffer no prejudice.

[4] Having listened to the arguments of the parties, I note that they are all relatives. The land is ancestral land which belonged to their father. It is also land where some of them occupy. It has not been disputed that there is an appeal pending before the court of Appeal at Eldoret. There is a judgment of the court that might be executed against the applicants. Such an execution would disturb the current occupation of the appellants on the suit land.

[5] On the balance of convenience, I order a stay of execution pending the hearing of the Appeal in the court of Appeal. I do not think the respondents will suffer any prejudice by waiting for the appeal to be heard. The costs of this application shall abide with the outcome of the appeal.

It is so ordered.

**S.MUKUNYA**

**JUDGE**

**27/1/2016**

**DATED at Bungoma this 9<sup>th</sup> day of March 2016.**

**S.MUKUNYA**

**JUDGE**