



**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KITALE**  
**LAND CASE NO. 122 OF 2012**  
**ESTATE OF SYLVESTER KIMAGUT SANG Represented by**  
**JANNIFER CHEBET SANG.....PLAINTIFF**  
**VERSUS**  
**JANE JEPTOO SAWE.....DEFENDANT**

**RULING**

1. The applicant Jane Jeptoo Sawe filed a notice of motion dated 27/1/2016 in which she seeks review of the court's ruling delivered on 25/1/2016. The applicant also seeks stay of execution of the decree in this case pending the hearing and determination of an application for stay which she filed in the Court of Appeal.

2. The ruling which is sought to be reviewed arose out of the applicant's application in which she sought stay of execution and or maintainance of the status quo pending an intended application for stay of execution at the court of Appeal. The application for stay of execution had not been filed in the court of Appeal. The applicant's application was dismissed in a ruling delivered on 25/1/2016.

3. The applicant contends that there are certain material facts which are now available which if they were brought to the attention of the court, the court would not have dismissed the applicant's application.

According to the applicant, these facts include the fact that the application for stay had been fixed for hearing on 12/11/2015 but the same was taken out of the hearing list.

That that application is now to be heard on 18/2/2016.

4. The applicant further contends that the appeal which she has preferred to the Court of Appeal will be rendered nugatory if stay of execution is not granted. That she has lived on the suit land for 32 years and that she is elderly with no other place to call home.

5. The applicant's application is opposed by the respondent based on the grounds of opposition filed on 2/2/2016. The respondent contends that the application is misconceived and bad in law. That it is only the Court of Appeal which can grant stay, this court having dismissed an application for stay by the applicant. That there are no credible grounds for review disclosed.

6. The grounds on which an application for review can be allowed are clearly set out under Order 45 Rule 1. None of the grounds have been disclosed in this application. The applicant has exhibited a letter from the Deputy Registrar of the Court of Appeal communicating the taking out of the applicant's application which had been set down for hearing on 12/11/2015. She has also exhibited a notice of

hearing of the application from the Court of Appeal.

7. The application which is sought to be reviewed was argued on 12/10/2015. The application now pending before the Court of Appeal had not been filed. It was filed after the application had been argued and a ruling date given. The applicant cannot therefore use these facts as grounds for review because the issue of that application did not exist. The applicant had come to court seeking stay in anticipation of filing the application before the Court of Appeal.

8. The applicant's application which resulted in the ruling of 25/1/2016 had sought maintenance of status quo and stay of execution pending the filing of an application for stay in the Court of Appeal. This application was dismissed. The applicant has now come back to court seeking the same prayers but this time disguised as review. This is clearly an abuse of the process of the court. Let the applicant wait for the outcome of the application for stay which is pending before the Court of Appeal. This application is hereby dismissed with costs to the respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 8th day of March 2016.

**E. OBAGA**

**JUDGE**

**8/3/2016**

In the presence of Mr Ndarwa for Plaintiff/Respondent

Court Assistant – Omulindi

**E. OBAGA**

**JUDGE**

**8/3/2016**