



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE NO. 92 OF 2004

DOUGLAS NGUNJIRI WAICHUNGO.....PLAINTIFF

VERSUS

PAUL LAGAT.....1ST DEFENDANT
FREDRICK GICIMU KURIA.....2ND DEFENDANT
SIMON KAMAU NG'ANG'A.....3RD DEFENDANT
PETER JUMA MWANDA.....4TH DEFENDANT
RICHARD WAFULA.....5TH DEFENDANT
JACKSON KOSKEI.....6TH DEFENDANT
FRANCIS MWARA.....7TH DEFENDANT
JOSEPH KIRWA CHUMO.....8TH DEFENDANT
DANIEL KIPLAGAT.....9TH DEFENDANT
PAUL KIRWA CHUMO.....10TH DEFENDANT

R U L I N G

1. The Defendants/Applicants filed a Notice of Motion dated 1/ 2/ 2016 in which they seek orders of stay of execution pending appeal. The Applicants contend that they have preferred an appeal against the Judgement of this court which was delivered on 10/12/2014. That if stay is not granted, the decree resulting from that Judgement will be executed and thus render the appeal nugatory.
2. The Respondent has opposed the application through replying affidavit sworn on 26/2/2016 in which he contends that the application herein has been overtaken by events in that the Applicants have already been evicted from the premises and that in any case, the application has been brought after along delay.

3. This being an application for stay pending appeal, **Order 42 Rule 6** requires that before such stay can be granted, the court must be satisfied that the application has been brought without unreasonable delay. That substantial loss will ensue if stay is not granted and that there is such security as the court orders for the due performance of such decree as may ultimately be binding on him is given.
4. In the instance case, the Judgement which is being appealed against was delivered on 10/12/2014. The application for stay was filed on 1 /2/2016. The application was therefore filed over a year later. The applicants have tried to explain the delay by arguing that they did not make the application because the process of execution had not started and that they had applied for proceedings which proceedings delayed. I do not think that an application for stay pending appeal should be pegged to the start of process of execution. A party intending to prefer an appeal against a decision should not wait until execution process starts before moving the court for stay. The typing and availability of proceedings should also not be a reason for not filing an application for stay. Once an aggrieved party has filed Notice of Appeal, he is free to file an application for stay so as to meet the requirement of **Order 42 Rule 6** which requires that an application be filed without unreasonable delay.
5. I find the delay of over one year to be unreasonable. There is no plausible reason given for the delay. On whether the Applicants will suffer substantial loss, a brief background of the case is necessary. The subject of the case is a suit premises at Moi's Bridge. The premises is in the name of the Respondent. The 1st to 7th Applicants were tenants in the premises. The 8th to 10th Respondents are members of the Chumo family who claim to have bought the premises after the same had been sold to the Respondent. The tenants that is the 1st to 7th Applicants have already been evicted from the premises. The 8th to 10th Applicants have never had control of the premises. What substantial loss will they suffer ?

I do not think that the Applicants will suffer any substantial loss.

6. The 1st to 7th Applicants have no interest in the premises other than their tenancy. They have already been evicted. The 8th to 10th Applicants have never had control of the property. It is not in their name. The Respondent had sued for eviction which eviction has been carried out. There is nothing to be stayed at the moment. A court cannot give orders in vain and in any case the Applicants have not demonstrated loss which they will incur. The tenants have been enjoying the premises without paying rent to the registered proprietor who is the Respondent.
7. Security will have been considered if there was demonstration of substantial loss. I find that the Applicants' application lacks merit. The same is hereby dismissed with costs to the Respondent.

It is so ordered.

Dated, signed and delivered at Kitale on this 19th day of April 2016.

E. OBAGA

JUDGE

In the presence of Mr Olonyi for Mr Wanyama for Respondent.

Court Assistant: Isabellah

E. OBAGA

JUDGE

19/4/16