



**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT KITALE**

**LAND CASE NO. 115 OF 2013**

**KITALE PENTECOSTAL CHURCH *THROUGH ITS BOARD OF TRUST* NAMELY**

**JOSEPHAT OGELE ELEGWA**

**MICHAEL WAMALWA NALWELISIE .....PLAINTIFFS**

**RUTH SIKOLIA MAKONJO**

**MARGARET MASITA MUHALIA**

**HUMPHREY MWOLE EGOSANGWA**

**VERSUS**

**BERNARD AYEKA**

**ALLAN LIDAMBITSA ....DEFENDANTS**

**SHEM LUYAI**

**John Juma**

**R U L I N G**

1. The plaintiff/applicants filed a notice of motion dated 3/5/2016 in which they seek among other prayers stay of execution pending appeal. The applicants contend that the defendant/respondents are in the process of executing for costs yet there is an appeal pending against the judgement of the court which was delivered on 27/10/2015.
2. The respondents opposed the applicants' application based on grounds of opposition filed on 11/5/2016. The respondents contend that the application lacks merit and that the same has been brought belatedly and that it does not meet the threshold for grant of stay pending appeal.
3. I have gone through the application as well as the opposition thereto by the respondents. This application was mainly brought up with a view to arresting taxation of costs which was in the process. The bill of costs has since been taxed thus rendering prayers 1 and 2 of the motion superfluous. The only issue for determination is whether the applicants have met the threshold for grant of stay pending appeal.
4. For an applicant to succeed in an application for stay pending appeal, such application must be brought without unreasonable delay. The applicant has also to demonstrate that there will be substantial loss should stay of execution not be granted. There has also to be such security as the court orders for due

performance of such decree as may ultimately be binding on the applicant.

5. In the instant case, judgement was delivered on 27/10/2015. This application was filed on 3/5/2016 six months after the judgement was delivered. No explanation has been given for this delay which I find unreasonable in the circumstances. There is no substantial loss which the applicants will suffer in this case. The applicants had sued the respondents seeking an order compelling the respondents to surrender to them a title deed in respect of LR. No. Kitale Municipality Block 3/11. This suit was dismissed with costs to the respondents. The respondents are only seeking to have their costs. I do not see what substantial loss the applicants will suffer if they paid costs to the respondents. In the event that they succeed in their appeal, the respondents will refund the costs. I therefore find that this application lacks merit. The same is hereby dismissed with costs to the respondents.

It is so ordered.

**Dated, signed and delivered at Kitale on this 4<sup>th</sup> day of October, 2016.**

**E. OBAGA**

**JUDGE**

**COURT**

Ruling signed in open court at 3.00pm in the absence of parties who were aware of the date and time for ruling.

Court Assistant – Isabellah.

**E. OBAGA**

**JUDGE**

**4/10/2016**