



REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT
AT KITALE
LAND CASE NO. 9 OF 2014
ESTATE OF KIPRONO ARAP LETING
represented by **ANDREW KIPROTICH RONO.....PLAINTIFF/RESPONDENT**
VERSUS
PAULINE YEBEI.....1ST DEFENDANT/APPLICANT
SAMUEL KUTTO.....2ND DEFENDANT/APPLICANT

R U L I N G

1. The applicants **Pauline Yebei** and **Samuel Kutto** filed a notice of motion on 28/7/2015 seeking stay of execution pending appeal from this court's ruling delivered on 25/6/2015. The applicants contend that they have preferred an appeal against the said ruling and that if stay is not granted, their appeal will be rendered nugatory.
2. The applicants further contend that the respondent has already extracted a decree pursuant to which warrant of arrest have been issued. They fear their liberty will be curtailed if they are arrested and placed in cells for failure to pay costs to the respondent.
3. The respondent has opposed the applicants' application based on a replying affidavit sworn on 3/9/2015 and filed in court on 10/9/2015. The respondent contends that the applicants' application is misconceived and bad in law. The respondent further contends that the applicants have always maintained in affidavits filed by them that they are not on the suit land and that therefore there is no substantial loss which they will suffer as to justify grant of stay of execution. The respondent states that he is only seeking to execute for costs which the estate of his father was granted.
4. The respondent states that the suit land is **71 acres** and he is only asking costs of **Kshs.93,901/=**. If the applicants succeed in their appeal, it will not be a problem to refund the costs.
5. This is an application which is brought under Order 42 Rule 6 of the Civil Procedure Rules. The said rule sets out conditions which must be met before an order of stay can be granted. First, the application must be brought without unreasonable delay. Secondly, the applicant must demonstrate that he will suffer substantial loss should stay be refused. Thirdly, there is the issue of costs regarding the orders which will ultimately bind the applicants.
6. In the instant case, the respondent had sued the applicants seeking a declaration that **LR. No. Chepsiro/Kibuswa Block 1(Kapcheplanget)/40** was sole property of **Kiprono Philip Leting** and that

the applicants had no proprietary interest in the same. He also sought a permanent injunction against the applicants. The applicants did not enter appearance. The case proceeded ex-parte and judgment was entered in favour of the respondent who was the administrator of his father's estate.

7. The applicants made an application seeking to set aside the judgment which application was rejected prompting the filing of appeal against the same and hence this application. The applicants have all along maintained that they are not on the suit land. They contend that it is someone else who is on the suit land. The respondent is seeking to have costs which he was granted in the case. I do not see how payment of costs will render the appeal nugatory. There is no demonstration that payment of the costs will occasion substantial loss to the applicant. If they succeed in their appeal, any money which they will have paid will be refunded. The respondent says that the suit land is 71 acres. It is clear that the respondent is capable of refunding the costs should the appellants appeal be successful.

8. The applicants have failed to demonstrate that they will suffer substantial loss. It is therefore difficult to see why the respondent should be stopped from having his costs. I therefore 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 **13th** day of **October, 2015**.

E. OBAGA

JUDGE

In the presence of M/s Mufutu for Plaintiff/Respondent

Court Assistant – Winnie.

E. OBAGA

JUDGE

13/10/15