

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT OF KENYA AT ELDORET

E&L 786 OF 2012

Formerly HCC 212 of 2011

Formerly NKR HCC 81 of 2008

SAMUEL KIPLAGAT NAMINI & 2 OTHERSPLAINTIFFS

VS

THE TOWN COUNCIL OF ELDAMA

RAVINE & 8 OTHERS.....DEFENDANTS

RULING

An application has been filed today by three persons namely Charles Chebet, Reuben Chelagat and Michael Kimani on their behalf and on behalf of 72 others.

The substantive prayer in their application is that they want the judgment and all other consequential orders set aside. They also want to be given leave to defend this suit. Their reasons are that they were not named as defendants in this suit but they are on the suit land and may be affected by an imminent eviction.

This suit was filed by the plaintiffs against 9 defendants seeking declaratory and eviction orders over the land parcels L.R. No. 498/654 and L.R. No. 498/655. I heard the matter and delivered Judgment on 17/7/2013. I inter alia ordered the 2nd-9th defendants to vacate the suit premises within 30 days of service of the Judgment. Through an application dated 31/10/2013, the plaintiffs filed an application seeking orders of eviction. I heard that application on 7/11/2013 and deferred the ruling to 19/11/2013. The applicants herein want a stay of delivery of that ruling pending hearing of this application interpartes. They also at this stage want a stay of execution of the Judgment.

I have considered the application. I note that the applicants are not parties to this suit. It follows that the plaintiffs can only enforce orders against the persons they have sued. The application for eviction does not relate to them. I therefore do not see why I should arrest the delivery of that ruling. This matter has already been heard and determined and the rights between the parties determined. The applicants are not among the parties among whom rights were determined. If they have a right of their own, they are free to file suit. On my part, without making any final determination on the substance of the application, I think this application is misplaced.

For the above reasons, I decline to issue any orders arresting delivery of the ruling scheduled for tomorrow. Neither do I issue any interim orders. I direct that this application be mentioned tomorrow so that I can give a date inter-partes. I also direct that it be served forthwith.

DATED, SIGNED AND DELIVERED THIS 18TH DAY OF NOVEMBER 2013

JUSTICE MUNYAO SILA

ENVIRONMENT AND LAND COURT AT ELDORET

Read in open Court

In the Presence of:-