



IN THE COURT OF APPEAL

AT ELDORET

(CORAM: OKWENGU, MUSINGA & MURGOR, J.J.A.)

CIVIL APPLICATION NO. 28 OF 2020

BETWEEN

ROBERT MUKARANI SIMITI.....1ST APPLICANT

JOSEPH WANDAKA.....2ND APPLICANT

FRED WANGILA.....3RD APPLICANT

AND

PETER BADHIA.....1ST RESPONDENT

PETER WEKESA.....2ND RESPONDENT

ANN WEKESA.....3RD RESPONDENT

DR. TIMOTHY PIERCE.....4TH RESPONDENT

(An application for stay of execution of the Judgment and Decree of the Environment

and Land Court of Kenya at Kitale (E. Obaga, J.) delivered on 8th March, 2017

in ELC No. 103 of 2007.)

RULING OF THE COURT

1. The applicants sought an order for stay of execution of the Court orders made on 13th November 2018 pending hearing and determination of an appeal.
2. In the impugned judgment, the Environment and Land Court at Kitale had ordered that the applicants do vacate the disputed parcels of land known as **Kiminini/Kinyoro Block 4/27 and 28** and hand them over to the Trustees of the Faith Centre Children's Home with immediate effect, failing which they be evicted therefrom.
3. The applicants' application for stay of execution of the said orders before the trial court was initially dismissed for non-compliance with **order 9 rule 9** of the **Civil Procedure Rules**, but the applicants demonstrated that there was due compliance with the said rule before they filed the application. Subsequently, the initial ruling was reviewed and the application was re-heard but dismissed on its merits. The applicants then preferred an appeal to this Court.
4. The applicants contended that they have an arguable appeal; and that unless the Court orders stay of execution, they shall be evicted from the disputed parcels of land, which would paralyze operations of a Children's Home thereon, with a population of 234 children, which would render the appeal nugatory.
5. In their replying affidavit, the respondents stated, *inter alia*, that the eviction order was executed on 9th March 2020 and annexed a copy of the eviction order, whose execution was duly witnessed by the County Police Commander.
6. The respondents further stated that there were no children in the disputed properties; and that the applicants run their own Children's Home at Kipsongo in the outskirts of Kitale Town where the children are housed.

7. The respondents' contention that the order sought to be stayed has already been executed and the applicants are no longer in occupation of the disputed property is not contested by the applicants.

8. In the circumstances, there is nothing to stay, execution having already taken place. Consequently, this application is dismissed with costs to the respondents.

Dated and delivered at Nairobi this 24th day of July ,2020.

HANNAH OKWENGU

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JUDGE OF APPEAL

D.K. MUSINGA

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JUDGE OF APPEAL

A.K. MURGOR

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JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR