



**IN THE COURT OF APPEAL**

**AT KISUMU**

**(CORAM: GITHINJI, HANNAH OKWENGU &**

**J. MOHAMMED, J.J.A.)**

**CIVIL APPLICATION NO. 12 OF 2017**

**BETWEEN**

**GEORGE AHUYO OLUOCH ..... 1<sup>ST</sup> APPLICANT**

**FANUEL OTIENO OLUOCH ..... 2<sup>ND</sup> APPLICANT**

**VITALIS ANGUCHA OLUOCH ..... 3<sup>RD</sup> APPLICANT**

**(Suing for and on behalf of the Estate of their **father****

**Michael Oluoch Ahuyo – Deceased)**

**AND**

**SIAYA COUNTY COUNCIL.....RESPONDENT**

**(Now Siaya County Government)**

***(An Application for stay of execution of the judgment of the High Court of Kenya, Environment and Land Court at Kisumu, (Kibunja, J.) dated 14<sup>th</sup> December, 2016***

**in**

**ELC CASE NO. 14 OF 2007)**

**\*\*\*\*\***

**RULING OF THE COURT**

[1] This is an application under **Rule 5(2) (b)** of the **Court of Appeal Rules** for stay of execution of the judgment of the Environment and Land Court (**ELC**), (Kibunja, J.) pending the hearing and determination of an intended appeal.

[2] The applicants who appear in person are the joint administrators of the estate of **Michael Oluoch Ahuyo**, their father who died on 13<sup>th</sup> April, 1990. Their claim to land title **No. Siaya/Kochieng B/1027** registered in the name of the respondent and which is being used as a public market was dismissed by the

Environment and Land Court (ELC).

[3] The applicants' case in the ELC was in essence that after the completion of the Land Adjudication process in mid 1980s, their deceased father Michael Oluoch Ahuyo was found to be the proprietor of land parcel **No. Kochieng B/20**. However, before Land Registration the land was unlawfully sub-divided into two parcels namely: **Siaya Kochieng B/1027** and **Siaya/Kochieng B/2018** and land title No. **Siaya/Kochieng B/1027** registered in the name of **Siaya County Council** while title No **Siaya/Kochieng B/1028** was registered in the name of their deceased father.

[4] The trial Judge after consideration of the oral and documentary evidence made findings *inter alia*, that land titles Nos. Siaya/Kochieng B/20, Siaya/Kochieng B/1027 and Siaya/Kochieng B/1028 were registered on the same day – 26<sup>th</sup> September, 1990 as first registration, that Siaya/ Kochieng B/1027 and Siaya/Kochieng B/1028 are not sub-divisions of Siaya/Kochieng B/20, that Siaya County Council has been in possession of said land Siaya/Kochieng B/1027 from 1990s, that applicants could not acquire title No. 1027 by adverse possession as it was public land and that the applicants' claim was time barred as it was filed over 12 years from the date the respondent was registered as proprietor.

[5] The applicants' intend to appeal against those findings on the grounds contained in the draft memorandum of appeal. The applicants admit that they were evicted from the said land on 21<sup>st</sup> April, 2016 long before the impugned judgment was delivered.

[6] Firstly, the applicants have not demonstrated that the intended appeal is arguable. The only document filed in support of the application is the judgment of the trial court. The documentary evidence relied on at the trial has not been availed. While we appreciate that the applicants are not represented by a counsel, the Court has to determine the application in accordance with the settled principles. We regret to say that the applicants have not shown any arguable issue of fact or law arising from the findings of the trial court.

[7] Secondly, the applicants have not shown that unless stay of execution is granted, the intended appeal would be rendered nugatory. The trial court made a finding of fact that Siaya County Council has been registered as proprietor of the suit land since 26<sup>th</sup> September, 1990, and has been using the land as a public market. Admittedly, the applicants were evicted from the suit land before the suit was determined. Thus, the judgment is not capable of execution save for recovery of costs. The applicants claim that unless execution of the judgment is granted the respondent will sub-divide the land and allocate plots to members of the public. However, there is no concrete evidence such as a development plan of the suit land to show that allocation of the suit land to members of the public is imminent.

[8] For the foregoing reasons, the application has no merit and is hereby dismissed. The costs of the application shall be costs in the appeal.

**Dated and Delivered at Kisumu this 28<sup>th</sup> day of September, 2017.**

**E. M. GITHINJI**

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**JUDGE OF APPEAL**

**HANNAH OKWENGU**

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**JUDGE OF APPEAL**

**J. MOHAMMED**

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**JUDGE OF APPEAL**

I certify that this is a true copy  
of the original

**DEPUTY REGISTRAR**