



IN THE COURT OF APPEAL

AT ELDORET

CORAM: OMOLO, TUNOI & O'KUBASU J.J.A

CIVIL APPLICATION NAI 15 OF 2005

BETWEEN

KOLONGEI FARMERS CO-OPERATIVE SOCIETY LTD.....APPLICANT

AND

1 TOM KEVOLWE ANZINGALE

2 JASPA MUTONGE ANZINGALE

3 MANASSEH AGENGO ANZINGALE

4 DAN ADENYA ANZINGALE

5 HENRY AGENDO ANZINGALE

6 AMOS MBIHI ANZINGALE

7 HESBON AMOYI ANZINGALE.....RESPONDENTS

(An application for stay of execution in an intended appeal from the judgment and decree of the High Court of Kenya at Kitale (Nambuye, J) dated 10th June, 2004)

in

H.C.C.C. NO 104 OF 1997)

RULING OF THE COURT

This is an application for stay of execution brought under **rule 5(2) (b)** of the Court of Appeal Rules. The dispute herein relates to a piece of land measuring about 202 acres. It has been argued by Mr Amuga for the applicant that the superior court relied on a consent order made in High Court Civil case file which file was not produced in evidence. This fact has been conceded in the judgment of the superior court. It has been argued that the members of the applicant society (**Kolongei Farmers Co-operative Society Ltd**) entered this piece of land 14 years ago. They have undertaken various developments like building

houses on this land. The respondents have been living out of this land for the last 14 years.

Considering what has been stated before us, we are satisfied that from the fact that the judgment of the superior court was based on a file which was not produced, the applicant has demonstrated that its appeal is not frivolous.

As regards nugatory aspect of the matter we appreciate the fact that the members of the applicant society have been on this land for the last 14 years while the respondents have been out of this land for the last 14 years. We are of the view that taking into account the circumstances of this case it would be proper to order for the status quo to be maintained until the appeal is heard and determined.

For the foregoing reasons, we allow this application and order a stay of execution of the decree in Kitale High Court Civil case NO. 104 of 1997 pending the hearing and determination of the appeal filed by the applicant Society. Costs shall be in the appeal.

MADE at Eldoret this 23rd day of September, 2005.

R.S.C. OMOLO

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JUDGE OF APPEAL

P. K. TUNOI

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JUDGE OF APPEAL

E.O. O'KUBASU

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JUDGE OF APPEAL