



REPUBLIC OF KENYA

IN THE LAND AND ENVIRONMENT COURT

AT ELDORET

CIVIL SUIT NO. 414 OF 2012

KIMUTAI LELEI.....PLAINTIFF/APPLICANT

VERSUS

HOSEA BITTOK.....1ST DEFENDANT/RESPONDENT

THE MANAGEMENT COMMITTEE KAPSARET

BONDENI SELF HELP GROUP.....2ND DEFENDANT/RESPONDENT

RULING

This ruling is in respect of an application dated 28th April 2020 by the plaintiff/applicant seeking for the following orders:

- a) That there be a stay of execution of the orders of eviction made on the 25th February, 2020 in Eldoret ELC. No. 414 of 2012 Kimutai Lelei vs Hosea Kibitok & another pending the hearing and determination of Eldoret Court of Appeal Civil Application No. 9 of 2020 Kimutai Lelei vs Hosea Kibitok.
- b) That an injunction do issue against the 1st respondent restraining him whether by himself, his servants and/or agents from evicting the plaintiff or alienating or harassing him in the occupancy of land on PIONEER/NGERIA BLOCK 1(EATEC)113 pending the hearing and determination of Eldoret Court of Appeal Civil Application No. 9 of 2020 Kimutai Lelei vs Hosea Kibitok.
- c) THAT the costs of the application be provided for.

Counsel agreed to canvass the application by way of written submissions which were duly filed.

ANALYSIS AND DETERMINATION

This is an application for stay of eviction orders granted on 25th February 2020. The applicant herein had made an application for stay of execution of the judgment and decree which ruling was delivered on 10th December 2019 and the same was dismissed with costs to the 1st defendant

Eviction orders are by their very nature execution of a judgment and comprehensively covered under **Order 42 Rule 6**. This makes the court *functus officio* as the court had rendered itself on the same issue of stay of execution. The applicant can move to the next level of the hierarchy of courts. Trying to have a second bite of the cherry cannot work in the court that is *functus officio*. This application amounts to abuse of court process.

I have considered the application, the submission of counsel and will therefore not write an elaborate ruling on this issue as the record speaks for itself. I find that the application lacks merit and is hereby dismissed with costs to the 1st defendant/respondent.

DATED and DELIVERED at ELDORET this 15TH DAY OF JULY, 2020

M. A. ODENY

JUDGE



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