



**Ngoka v Wambari (Environment & Land Case E070 of 2024)
[2025] KEELC 1496 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1496 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE E070 OF 2024
FM NJOROGE, J
MARCH 26, 2025**

BETWEEN

SHARIF BAYA NGOKA PLAINTIFF

AND

ATHANESE MWAMBA WAMBARI DEFENDANT

RULING

1. The application before this court, dated 6/1/2025, was filed by the appellant. The appellant sought the following reliefs: -
 - a.Spent;
 - b. Spent;
 - c. That the warrants of arrest against the appellant and the appellant's committal to civil jail issued on 26th November 2024 by hon M.S. Kimani PM are hereby stayed pending the inter partes hearing and determination of this appeal;
 - d. That the costs of the application be provided for.
2. The applicant's grounds for the application are that warrants of arrest were issued against him on 26th November 2024 as well as an order for committal to civil jail for 6 months and his liberty is at stake. However, his tools of trade were attached by an auctioneer, who is yet to render an account thereof despite a court order to that effect. The appellant avers that his attempts at satisfying the decree have been embarrassed by the attachment of his tools of trade. He has offered land to the decree holder in settlement to no avail. That the land in question was registered in the joint names of the parties herein and the interests of the decree holder were thus secure; that he seeks to pay in instalments upon provision of the accounts.
3. Respondent's response.



4. The respondent filed a replying affidavit dated 6/2/2025 and gave a lengthy history of the dispute. He deponed as follows: that the suit proceeded to hearing ex parte; that judgment in his favour was entered in 2022 and notice of entry of judgment was issued; that as no payment was forthcoming execution issued; the execution was briefly stayed by court order but it later resumed and the attached goods were physically seized on 15/7/2022; that an appeal was filed –Malindi civil appeal no 22 of 2022- and a further stay made upon an oral application by the appellant; later on in January 2023 judgment was set aside on condition that the defendant deposited the entire decretal sum of 800,000/= plus interest in an interest earning account within 30 days in default of which the decree orders would stand vacated and the decree would be ready for implementation again; the appellant never complied and after the expiry of the period granted he made another application for stay of execution which was dismissed on 1/3/2023; that the appellant through his advocate sought a settlement out of court in March 2023; that on 20th June 2023 parties reached a settlement save for storage charges; that no attached goods have been sold since the court stayed sale on 22/9/2023. He asserts that the decretal sum now stands at Kshs 1,369,560 and the storage charges amount to Kshs 460,000/=; That despite proposal by the appellant, not even a first instalment has been paid; that in view of the foregoing the purpose of the application is to further delay payment.

Analysis and determination.

5. There is still scanty information at the present, but from what the parties state, it is noteworthy that the respondent concedes that the hearing of the case proceeded ex parte.
6. For now and based on the material before it, this court does not know if there was a challenge mounted by the appellant against the substantive decision finding that the appellant had not kept his fiduciary relationship to the respondent by failing to transfer the land or sell it to the respondent but it is stated that there is an appeal that was lodged by the present appellant.
7. Notably there is no mention of the alleged joint registration of land in the names of the parties herein at the time of demarcation. That notwithstanding this court finds relevant the issue of whether or not the provision of accounts was germane to the proceedings before the Principal Magistrate's court, and that it forms a triable issue evinced in the memorandum of appeal dated 5th December 2024. That one triable issue in an appeal suffices for stay of execution to issue.
8. This court considers that the application before it was brought expeditiously after the impugned ruling was delivered. There is risk of loss of the applicant's liberty, while the appeal is still pending, if stay of execution is not granted. This amounts to risk of substantial loss, for if the execution issues by way of incarceration, nothing can subsequently restore such lost time if it is spent in civil jail. I think that notwithstanding the delay the hearing of the appeal it may engender, the constitutional dictates of Article 50(1) are that the appellant deserves a hearing on his appeal regarding the issue raised.
9. Consequently, I allow the application dated in terms of Prayer No 3 thereof. However, given the lengthy history of this matter, the finalization of this appeal shall be expedited and I give the following orders to facilitate that end:
 - a. The appellant shall file and serve his record of appeal and file an affidavit of service thereof within 45 days in default of which the stay orders herein granted shall stand automatically vacated;
 - b. The lower court file record shall be availed through the Deputy Registrar within 60 days of this order;
 - c. Parties shall appear for a mention on 29th May 2025 for directions as to hearing;



- d. Parties are notified in advance that the appeal will be disposed of by way of filing of written submissions.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 26TH DAY OF MARCH 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

