



REPUBLIC OF KENYA



KENYA LAW
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**Cheruiyot v Murusoi & 33 others (Environment & Land Case
262 of 2017) [2023] KEELC 16765 (KLR) (22 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16765 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 262 OF 2017
MN KULLOW, J
MARCH 22, 2023**

BETWEEN

ERIC KIPLAGAT CHERUIYOT PLAINTIFF

AND

RICHARD K MURUSOI & 33 OTHERS DEFENDANT

RULING

1. By Notice of Motion dated October 8, 2022, the Applicants sought the following orders:-
 - a. Spent
 - b. That the honourable court be pleased to issue an order of eviction against the defendants their agents, servants or any other person claiming through item title NO Cis Mara/olpusimoru/428.
 - c. That the OCs Olkurto Police Station be ordered to provide security to court Bailiffs during the eviction.
 - d. That the costs of the application be provided for.
2. The application was based on the ground that Judgment had already been entered in favour of the plaintiff or eviction of the defendants and that Judgment and the Decree had already been served on and a conditional stay of execution was granted by the court on May 6, 2020 for the respondent to provide security of Kshs 2,500,000, but they have failed to comply with the same and therefore they are entitled to an order of eviction. The application was further supported on the grounds deponed to or the supporting affidavit of the applicant.
3. The application was opposed by Mr Richard Kiproop Murusoi on his behalf of all the other respondents. He contended that the supporting affidavit annexed to the application is laced with untruths and unsubstantiated statements that ought to be struck out. He stated that being aggrieved



by the Judgment of the court they have preferred an Appeal in the Court of Appeal vide a Notice of Appeal dated November 7, 2018 and have filed an application of stay of execution pending the Appeal and a conditional stay granted but they have been unable to deposit the security for costs as they are displaced persons following land clashes and further that the Covid 19 situation in 2020 has interfered with their sources of income and can only raise the sum of Kshs 150,000/= as security for costs.

4. The respondent has further implored the court in the interest of justice to pass the subject matter pending the determination of the Appeal.
5. I have considered the application and the replying affidavit in support of the same and the submissions filed by the parties.

This is an application in which the applicant seeks the eviction of the respondents after they were granted a conditional stay in which the respondents have not been able to comply with the terms of the conditional stay.

6. It is not contested by both the parties that the respondent was to deposit the sum of Kshs 2,500,000/= as security for costs but the respondents contend that the effect of Covid 19 had interfered with the sources of income and thus they cannot raise the said amount.
7. The court is now called upon to balance the interest of the Appellant to enjoy the fruits of his Judgment and that of the respondent who cannot raise the security for costs with an Appeal on the Judgment pending for determination. In the case of *Ms Portriez Maternity vs James Karanga Kabis Civil Appeal No 63 of 1997* the court held that :-

' The right of Appeal must be balanced against equally weighty right that of the plaintiff to enjoy the fruits of the Judgment delivered in his favour, there must be a just cause for depriving the plaintiff that right.'

8. Bearing the above and taking judicial Notice of the fact that the Covid 19 Pandemic had greatly interfered with the sources of livelihood and income of various households in the Country. I will further review the amount of the security for costs suo moto from the sum of Kshs 2,500,000/= to Kshs 2,000,000/= to be deposited as security by the respondents within 45 days and in default eviction to issue.
9. Order accordingly.

DATED SIGNED DELIVERED, Virtually at MIGORI this 22nd Day of MARCH 2022.

MOHAMMED .N. KULLOW

JUDGE

In presence of :-

Tom Maurice – Court Assistant

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