



Tuyoto & 124 others v Chairman Limanet Group Ranch Committee & 3 others (Environment & Land Case 246 of 2017) [2023] KEELC 16758 (KLR) (16 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16758 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAROK
ENVIRONMENT & LAND CASE 246 OF 2017
MN KULLOW, J
MARCH 16, 2023
(FORMERLY NAKURU HCC NO. 219 OF 2011)**

BETWEEN

MERIN OLE TUYOTO & 124 OTHERS PLAINTIFF

AND

CHAIRMAN LIMANET GROUP RANCH COMMITTEE 1ST DEFENDANT

DISTRICT LAND REGISTRAR 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

DANSON RIKANA SANOE 4TH DEFENDANT

RULING

1. By Notice of Motion dated 28/4/2021, and brought under order 42 Rule (6) of the Civil Procedure 2010 and section 1 and 1B and 3A of the Civil Procedure. the Applicants sought the following orders: -
 - a. spent
 - b. That pending the hearing and determination of this application interpartes, there be a stay of execution of the Judgment and decree of the court delivered on 17/3/2021 and all other consequential orders therefor.
 - c. There be a stay of execution of the Judgment and decree herein pending the hearing and determination of the intended Appeal.
 - d. That the costs of the application be provided for.
2. The application was based on the ground Judgment was delivered in favour of the defendants/respondents against the plaintiff/applicant and that the applicants are dissatisfied with the said



Judgment and that they already lodged a Notice of Appeal in court and the respondent are likely to execute the said Judgment and if the same happens they will suffer substantial loss and damage.

3. The applicants further contended that the Appeal has a chance of success and the Appeal may be rendered nugatory. The grounds relied on by the applicant was further supported by the Affidavit of Merin Ole Tuyoto filed in court on 9/4/2021, where a copy of the Notice of Appeal was annexed to the said affidavit.
4. The application was opposed by the respondent by way of a replying affidavit sworn by Sachwa Ole Naeni who is the secretary of Limanet Group Ranch Committee in which he contends that the application is incompetent as the applicants were granted a stay of execution and their record only lies in the Court of Appeal since upon rendering Judgment. The trial court became Functus Officio and it cannot revisit issues that were before it and had determined and further that a party cannot show that he has a prima facie case before a court has rendered Judgment in a matter.
5. The defendant further contends that the right recourse for the applicant would have been to seek a stay of execution before the Court of Appeal where the Appeal is currently domiciled as there is no leeway for the trial court to grant the orders sought.
6. I have considered the application before me and the replying affidavit in opposition to the said application and the submissions filed by the parties. The applicants been apprehensive that the respondent are likely to execute the decree filed.
7. The defendant on the other hand contended that the court is functus Officio and the only recourse for the applicant is to seek the stay in the Court of Appeal.
8. The power to grant a stay of execution is a discretionary power exercised by Order 42 Rule 6 (2) of the *Civil Procedure Rules* vests in the court where it is convinced that substantial loss may occur and the Appeal rendered nugatory.
9. Having considered the circumstances of the instant Application, this is an application which I am of the considered view that in the event that the orders sought is not granted the Appeal may be rendered nugatory. There exist special circumstances that warrant the grant of the orders that this being a suit relating to land which is emotive, the subject of the Appeal could be altered in such a manner as to make the Appeal nugatory.
10. In view of the above, I will thus exercise my discretion and allow the Notice of motion dated 28/4/2021 and accordingly grant a stay of execution pending the hearing and determination of the Appeal on the condition that the applicant do file the record of Appeal within 60 days of this Ruling and set the said Appeal for hearing and in default the stay of execution herein granted shall automatically lapse.

DATED SIGNED DELIVERED, VIRTUALLY AT MIGORI THIS 16TH DAY MARCH OF 2022.

MOHAMMED .N. KULLOW

JUDGE

In presence of :-

Tom Maurice – Court Assistant

