



REPUBLIC OF KENYA



KENYA LAW
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Ndatani Enterprises Company Limited v Noor & 2 others (Environment and Land Appeal E002 of 2023) [2023] KEELC 17021 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17021 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E002 OF 2023
LC KOMINGOI, J
APRIL 20, 2023

BETWEEN

NDATANI ENTERPRISES COMPANY LIMITED APPELLANT

AND

ABSHIR OSMAN NOOR 1ST RESPONDENT

EQUITY BANK COMPANY LIMITED 2ND RESPONDENT

LAND REGISTRAR, KAJIADO LAND REGISTRY 3RD RESPONDENT

RULING

1. This is the Notice of dated 31/1/2023 brought under; (order 50 rule 1 of the [Civil Procedure Rules](#), order 40 of the [Civil Procedure Rules](#), section 3 and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the Law)
2. It seeks orders:
 1. Spent.
 2. Spent.
 3. That there be a stay to the Ruling and Orders made by the Honourable Senior Resident Magistrate B. Cheloti delivered on 26th January 2023 vide ELC Case No. E124 of 2022 Ndatani Enterprises Company Limited Versus Abshir Osman Noor and two Others and all subsequent Orders to the extent and context of the Orders that a temporary Order of Injunction be and is hereby issued against the plaintiff, their agents, servants and/or employees or any other person(s), acting on their behalf from intermeddling, entering, claiming, trespassing, alienating, constructing, building, possessing, auctioning, transferring, alienating, sub-leasing, sub-



dividing, selling, trespassing onto, constructing and/or in any other manner whatsoever interfere with the suit property known as Kajiado./Kaputiei-north/43020 pending the hearing and determination of this appeal.

4. That in the alternative to Prayer 2 and 3 above, status quo be maintained in the sense that the Appellant/Applicant is in occupation and possession of the suit property pending the hearing and determination of this instant application and appeal.
5. That costs of this application be provided for.
3. The grounds are on the face of the application and are set out on paragraphs 1 to 6.
4. The application is supported by the Affidavit of Alex Muema Muthengi a director of the Appellant/Applicant sworn on the 31/1/2023.
5. The application is opposed. There is a Replying Affidavit sworn by the 1st Respondent.
6. On the 2/3/2023 the court with the consent of parties directed that the Notice of Motion be canvassed by oral Submissions.
7. I have considered the Notice of Motion and the Affidavit in support. I have also considered the response thereto, the rival submissions and the authorities cited. The issues for determination are:
 - i. Whether the Appellants/Applicants application meets the threshold for granting orders of Stay of Execution pending appeal.
 - ii. Who should bear costs of this application?
8. The principles guiding the grant of Stay of execution pending appeal are well settled. Order 42 rule 6(2) of the Civil Procedure Rules Provides that;
 - (2) No order for stay of execution shall be made under subrule (1) unless-
 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. Such security as the court orders for due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
9. It is clear from the above Provisions that for an order of Stay of execution to be granted, specific conditions must be met by the applicant.
10. I have considered the notice of motion herein and I find that it has been brought without unreasonable delay.
11. On the 26/1/2023 Hon. B Cheloti (SRM) granted the following Orders:
 - “a)That the Orders issued on 14/11/2022 are stayed pending the determination of this Application.
 - b) That a temporary injunction be and is hereby issued against the plaintiff, 1st and 2nd defendant , their agents, servants and/or employees and any other persons(s) acting on their behalf from intermeddling, entering, claiming, trespassing, alienating, constructing, building, passing, auctioning, selling, transferring, alienating, subleasing, sub diving, trespassing into, constructing



and/or in any other manner whatsoever interfere with the suit property known as Kajiado/Kaputiei North/43020 pending the hearing and determination of this application and suit.

- c. That the matter be set down for hearing.
 - d. That there be an order as to costs.”
12. In my view the Learned Trial Magistrate having considered the competing interests issued orders to preserve the suit property pending hearing and determination of the suit. Both parties were denied access to the suit property. The Learned trial Magistrate directed parties to set the suit down for hearing. This means the Lower Court is yet to make any findings on the dispute.
 13. The Appellants/Applicants application before the Lower Court is dated 14/11/2022. This confirms the 1st Respondent’s assertions that the appellant entered the suit property in November 2022 and filed the said suit in the Lower Court. This was not controverted by the Appellant.
 14. I agree that the 1st Respondent submission that this application and the appeal are premature.
 15. The Learned trial Magistrate made orders to preserve the suit property and cannot be faulted in any way.
 16. The Appellant/Applicant has exhibited photographs showing a recently installed container on the suit property. This further confirms the 1st Respondent’s submission that appellants entered the suit property in November 2022 as a prerequisite to filing the Notice of Motion dated 14/11/2022.
 17. I also find that the Appellant/Applicant has failed to demonstrate what substantial loss it’s likely to suffer if these orders are not granted given that there’s only a container on the suit property.
 18. In conclusion, I find that the Appellant’s/Applicant’s application has not met the requirements set out in order 42 rule 6(2) of the Civil Procedure Rules.
 19. I find no merit in this application and the same is dismissed. The costs do abide the outcome of the Appeal.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF APRIL, 2023.

L.C KOMINGOI

JUDGE

In the Presence of:

Mr. Osoro for the Appellant.

Mr. Mugweru for the 1st Respondent.

N/A for the 2nd and 3rd Respondents.

Court Assistant Mutisya.

