



**Masud v Abdi (Environment & Land Case 19 of 2021)
[2023] KEELC 17515 (KLR) (24 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17515 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT HOMA BAY
ENVIRONMENT & LAND CASE 19 OF 2021
GMA ONGONDO, J
MAY 24, 2023**

BETWEEN

ABDUL OKOTH MASUD APPLICANT

AND

ISHA NGOMA ABDI RESPONDENT

RULING

1. The present ruling is in regard to an application by way of a notice of motion dated January 10, 2023 and filed herein on January 16, 2023 pursuant to, *inter alia*, section 3A of the [Civil Procedure Act](#) chapter 21 Laws of Kenya where the plaintiff/applicant, Abdul Okoth Masud through the firm of Omondi Awiti and Company Advocates, is seeking the following orders;
 - a. Spent
 - b. Spent
 - c. That there be stay of execution against the Judgment of the Environment and Land Court of Kenya at Homa Bay by G.M.A Ong'ondo, Judge dated December 8, 2022 pending the hearing and final determination of the appeal.
 - d. That the costs of this application be provided for.
2. The anchorage of the application is the applicant's affidavit of twelve paragraphs sworn on January 10, 2023 and grounds 1 to 8 set out on the face of the application. In a nutshell, the applicant's complaint is that on December 8, 2022, this court dismissed his suit. As a consequence, the there is bound to be alteration of register and issuance of title of the suit land reference number Central Karachuonyo/ Kanyadhiang/70 in favour of the respondent. That by a notice of appeal duly filed on January 16, 2023, the appeal may be rendered nugatory if the principal order sought in the application is not granted.



- That there was no inordinate delay in mounting the application. That the respondent is not likely to suffer any prejudice and that the application be allowed in the interest of justice.
3. The respondent was duly served as revealed in an affidavit of service sworn on February 24, 2023. There is neither response nor submissions in respect of the application.
 4. The application was heard by way of written submissions pursuant to this court's orders made on January 16, 2023.
 5. Accordingly, in the submissions dated February 24, 2023, learned counsel for the applicant made reference to the orders sought in the application, the judgment of this court rendered on December 8, 2022 and that there is no response to the application. Counsel submitted that the applicant is aggrieved by the said judgment and has filed a notice of appeal against the entire judgment. That the applicant has satisfied the requisite conditions under order 42 rule 6 (2) of the [Civil Procedure Rules, 2010](#) warranting the grant of the orders sought in the application. To buttress the submissions, counsel cited the case of [Butt-vs-Rent Restriction Tribunal](#) (1979) eKLR, among other authoritative pronouncements.
 6. I have duly considered the entire application, the applicant's submissions and the fact there is neither response nor submissions to the application. So, is the application meritorious?
 7. The application is brought under, inter alia, order 42 rule 6 (2) (Supra) and the court is guided by the tripe conditions that must be satisfied before a stay of execution of judgment and or decree is granted. The conditions relate to-
 - a. Likelihood of substantial loss on the part of the applicant,
 - b. Inordinate delay in mounting the application, and
 - c. Security in the due performance of the decree.
 8. On the first condition, since there is a likelihood of alteration of the register and issuance of title in favour of the respondent, the applicant is bound to suffer substantial loss. Further, by dint of the notice of appeal, there is an appeal deemed to have been duly lodged as envisioned under order 42 rule 6 (4) of the [Civil Procedure Rules, 2010](#) and, the applicant has undoubted right of appeal as held in [Butt](#) case (supra)
 9. Regarding delay, this court is conscious of order 50 of the [Civil Procedure Rules, 2010](#) in respect of time. In my considered view the delay of three weeks in the instant circumstances is reasonable.
 10. As regards security, no party is exempt thereby but at the court's discretion; see [Doshi Iron Mongers Ltd -vs-Kenya Revenue Authority and another](#) (2020) eKLR.
 11. Moreover, the court has the power of safeguarding the character and the integrity of subject matter of the appeal pending the resolution of the contested issues; see [Board of Governors, Moi High School Kabarak and another -vs-Malcolm Bell](#) (2013) eKLR and section 13 (7) (a) [Environment and Land Court Act, 2015](#) (2011)
 12. In the end, I find the application unchallenged and meritorious.
 13. Wherefore, I proceed to allow the application in the following terms;
 - a. Order of stay as stated in paragraph 1 (c) hereinabove, granted accordingly.
 - b. The applicant shall deposit Ksh 50,000/- being security for the due performance of the decree herein in court within the next thirty days from this date failing which the stay order to lapse automatically without any further orders being necessary.



c. Costs to abide the outcome of the appeal at the Court of Appeal.

DATED AND DELIVERED AT HOMA BAY THIS 24TH DAY OF MAY 2023

G.M.A ONG'ONDO

JUDGE

PRESENT

a. Mr. Awiti learned counsel for the applicant.

b. Mutiva. Court assistant.

