



**Yego v Kemei & another (Environment and Land Appeal
E004 of 2023) [2023] KEELC 19059 (KLR) (27 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19059 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT AND LAND APPEAL E004 OF 2023
MN MWANYALE, J
JULY 27, 2023**

BETWEEN

MARCELA JEPKOROS YEGO APPELLANT

AND

PAUL KEMEI 1ST RESPONDENT

DISTRICT LAND REGISTRAR NANDI 2ND RESPONDENT

RULING

1. Before me for determination is the Notice of Motion dated May 9, 2023 seeking for the following orders;
 - a. Spent
 - b. Spent
 - c. That, this Honourable Court be pleased to grant a stay of execution of the judgment and decree in Kapsabet CMELC No 32 of 2019 Marcela Jepkoros Yego v Paul Kemei and Another delivered and issued on the February 15, 2023 pending the hearing and determination of this appeal.
 - d. That, the costs of this application be provided for.
2. The application is premised on the 12 grounds enlisted therein. It is supported by the Affidavit of Marcela Jepkoros Yego. The Applicant deponed that on February 15, 2023 the Trial Court delivered judgment dismissing the Applicant's suit with costs to the Respondent. Dissatisfied with the said judgement the Applicant filed the present appeal which has high chances of success.



3. The 1st Respondent opposed the application vide Replying Affidavit dated June 5, 2023. He contended that the Applicant had failed to demonstrate the conditions necessary to warrant grant of the orders sought. He urged this Court to dismiss the application with costs.
4. The application was canvassed via written submissions. Both parties filed their respective submissions which this Court has taken into consideration.

Analysis And Determination: -

5. I have considered the application as well as submissions by parties, the only issue arising for determination is whether the Applicant is entitled to stay orders sought pending appeal.
6. In this application, the Applicant is seeking to stay a dismissal order by the Trial Court. This order is in nature a negative order incapable of execution.
7. Certainly, this Court cannot stay an action unless there exists a positive order which if executed will result in a loss to the other party. This Court cannot stay a negative order of dismissal. The Court of Appeal took a similar view in the case of *Kenya Commercial Bank Limited v Tamarina Meadows Limited & 7 others* [2016] eKLR where the Learned Judges states as follows; -

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“16. In *Kanwal Sarjit Singh Dhiman v Kehavji Juaraj Shah* [2008] eKLR, the Court of Appeal while dealing with a similar application for stay of a negative order, held as follows; -

“The 2nd prayer in the application is for stay (of execution) of the order of the superior Court made on December 18, 2006. The order of December 18, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior Court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution...”

8. A similar position was held in the case of *Gitundu v Wathuku* [2022] eKLR by the Court of Appeal.
9. In the premises, it is clear that there is no order by the Trial Court, which thus Court can stay. The application is hereby dismissed with costs.
10. Orders accordingly.

DATED AND DELIVERED AT KAPSABET THIS 27TH DAY OF JULY 2023.

HON. M. N. MWANYALE,

JUDGE.

In the presence of;

1. Mr. Korir holding brief for Ms. Kipsei for the Applicant
2. Mr. Tallam for the 1st Respondent.

