



**Oron v Kenya National Highways Authority & another (Environment & Land Case 178 of 2016) [2023] KEELC 18876 (KLR) (19 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18876 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISUMU  
ENVIRONMENT & LAND CASE 178 OF 2016**

**E ASATI, J  
JULY 19, 2023**

**BETWEEN**

**JOSHUA ODONGO ORON ..... PLAINTIFF**

**AND**

**KENYA NATIONAL HIGHWAYS AUTHORITY ..... 1<sup>ST</sup> DEFENDANT**

**THE ATTORNEY GENERAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is in respect of the 1<sup>st</sup> Defendant's application dated February 10, 2023 stated to be brought pursuant to the provisions of Section 7 of the [Appellate Jurisdictions Act](#) Cap 9 Laws of Kenya, Sections 1A, 1B, 3A and 99 of the [Civil Procedure Act](#) and Order 51 Rule 1 [Civil Procedure Rules, 2010](#). The application seeks for orders that;
  - a. An order be issued correcting the clerical error on the face of the Ruling delivered by Hon Justice A Ombwayo on May 31, 2022 to read May 31, 2022 and not May 31, 2021.
  - b. The Honourable court be pleased to grant leave to the 1<sup>st</sup> Defendant/Applicant to appeal against the entire Ruling delivered by Hon Justice A Ombwayo on May 31, 2022.
  - c. The Honourable court be pleased to grant an order of stay of further proceedings in this matter being Kisumu ELC Case No 178 of 2016, pending the hearing and determination of the intended appeal to be filed by the 1<sup>st</sup> Defendant/Applicant.
  - d. Cost of the application to abide the outcome of the appeal.
2. The application was supported by the averments in the Supporting Affidavit sworn by Jude T Ragot on February 10, 2023 and the annexures thereto.



3. The grounds upon which the application is brought as shown on the face of the application are that the court is divested of jurisdiction to hear and determine the matter as it involves a boundary dispute.

That the 1<sup>st</sup> Defendant filed a Notice of Preliminary Objection dated October 23, 2020 which was determined vide the court's ruling by Hon Justice A Ombwayo delivered on May 31, 2022 dismissing the Preliminary Objection. That the 1<sup>st</sup> Defendant being dissatisfied with the ruling has filed a Notice of Appeal dated June 3, 2022.

That the intended appeal raises arguable points of law with high chances of success. That the intended appeal if successful will render any further proceedings in the matter a waste of time since the appeal challenges the jurisdiction of the court to hear and determine the suit.

That the Deputy Registrar was unable to extract and certify the orders emanating from the ruling of May 31, 2022 because the date was erroneously indicated as May 31, 2021. That the error ought to be rectified to enable extraction of the order.

That under Rule 89(1)(h) of the *Court of Appeal Rules 2020*, a certified order or decree is a mandatory component of the Record of Appeal hence the 1<sup>st</sup> Defendant has not been able to file the appeal since the ruling is yet to be rectified.

4. Prayers (a) and (b) were not opposed. Prayer (c) which is a prayer for stay of proceedings was opposed. Counsel for the Plaintiff submitted that a stay of further proceedings means that the judicial clock shall be stopped. Counsel relied on the case of *Mudianga Investment Ltd -vs- Safari Limited (Africa) Ltd & 2 Others (2009) eKLR* where it was held that judicial time being the only resource the courts have at their disposal and its management does positively affect the entire system of administration of justice.
5. I have considered the application, the grounds advanced in opposition thereof and the submissions made.

As regards the prayer for rectification/correction on the date of the ruling, I have perused the court file herein and noted that on May 18, 2022 the court noted that 'it appears that a ruling has never been delivered to the parties'. The court then set the date for ruling on May 20, 2022. Thereafter, there is a typed ruling dated May 31, 2021. It is obviously a typographical error. Section 99 empowers this court to correct such errors.

6. As the prayer for leave to appeal is not opposed, I grant the same.
7. As regards the prayer for stay of proceedings, I have taken the submissions made by Counsel into account. I have noted that the issue in controversy is the jurisdiction of the court to hear and determine the matter. It will be futile to proceed with the hearing while the jurisdiction is being challenged in the Court of Appeal. The application is merited.
8. The upshot is that the application is allowed. Costs to the Plaintiff.

Orders accordingly.

**Ruling, dated and signed at Kisumu, read virtually this 19<sup>th</sup> day of July 2023 through Microsoft Teams Online Application.**

**E. ASATI,**

**JUDGE.**

**In the presence of:**

**Maureen- Court Assistant.**



**No appearance for the Plaintiff/Respondent.**

**No appearance for the 1<sup>st</sup> Defendants/Applicant.**

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