



**Kogo v Kenyan Urban Roads Authority & another (Environment & Land  
Petition 19 of 2020) [2023] KEELC 20256 (KLR) (28 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20256 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND PETITION 19 OF 2020**

**EO OBAGA, J**

**SEPTEMBER 28, 2023**

**IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND  
FREEDOMS UNDER ARTICLE 40, 47, 60 & 66 OF THE CONSTITUTION AND IN THE  
MATTER OF ENFORCEMENT OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER  
ARTICLE 40(3) (B) (I)(II) OF THE CONSTITUTION OF KENYA AND IN THE MATTER  
OF SECTION 3,4&6 OF THE LAND ACQUISITION ACT CAP 295 LAWS OF KENYA**

**BETWEEN**

**SAMMY BOIT ARAP KOGO ..... PETITIONER**

**AND**

**KENYAN URBAN ROADS AUTHORITY ..... 1<sup>ST</sup> RESPONDENT**

**NATIONAL LANDS COMMISSION ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This is a ruling in respect of a notice of motion dated May 29, 2023 in which the 1<sup>st</sup> Respondent/Applicant seeks stay of execution pending hearing and determination of an appeal filed before the Court of Appeal. The Applicant contends that if the Petitioner/Respondent executes the decree, it will suffer substantial loss and that the subject matter of the appeal will dissipate thus rendering the appeal nugatory.
2. The Applicant further states that the amount which was given to the Respondent is colossal and was not budgeted for in the financial year 2022/2023. It is further argued that if this amount was to be paid, it will interfere with the other contractual obligations of the Applicant which will ultimately affect the other budgeted for obligation which is likely to affect the taxpayers.
3. The Applicants' application is opposed based on a replying affidavit by the Respondent on June 13, 2023. The Respondent contends that the Applicant has not met the threshold for grant of stay pending



- appeal. The Respondent further states that the Applicant is not seeking to appeal because it has an arguable appeal but that the amount in the decree was not budgeted for in the financial year 2022/2023.
4. The Respondent states that if the court is minded to grant stay, then the stay should be conditional upon the Applicant paying 50% of the decretal and the other 50% be deposited in a joint interest earning account or in the alternative the entire decretal sum be deposited in an escrow account within 30 days.
  5. I have considered the Applicants' application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties. The only issue for determination is whether the Applicant has met the threshold for grant of stay pending appeal.
  6. In the instant case, judgment was delivered on April 19, 2023. The court granted a 30 day stay of execution. This application was filed on May 29, 2023. In the circumstances, I find that there was no unreasonable delay in filing the application.
  7. On whether the Applicant has demonstrated that it will suffer substantial loss, the Applicant is stating that the amount is colossal and that it was not budgeted for in the financial year 2022/2023. There is no demonstration that the applicant will suffer substantial loss. The mere fact that the money was not budgeted for is not a ground to show that the applicant will; suffer substantial loss.
  8. The Applicant is claiming that if the money is paid out, this will dissipate the substratum of the appeal thus rendering the appeal nugatory. The decree herein is a monetary one. It is very rare when execution in a monetary decree will render an appeal nugatory. The Applicant has already constructed a road through the Respondents property. He was not compensated for the acquired land. There is no way payment of the decretal sum will render the appeal nugatory. I find that the Applicants application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED and DELIVERED at ELDORET on this 28<sup>th</sup> day of SEPTEMBER, 2023.**

**E. O. OBAGA**

**JUDGE**

In the virtual absence of parties who were aware of the date of delivery of ruling.

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**28th SEPTEMBER, 2023**

