



**Kimutai (suing as the legal administrator of the Estate of Erick Kipsom Kimutai - Deceased) v Chepsom & 3 others (Environment and Land Appeal 002 of 2023) [2023] KEELC 20127 (KLR) (22 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20127 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL 002 OF 2023  
A OMBWAYO, J  
SEPTEMBER 22, 2023**

**BETWEEN**

**JULIA TERIKI KIMUTAI (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF ERICK KIPSOM KIMUTAI - DECEASED) ..... APPLICANT**

**AND**

**BENSOM KIPTUI CHEPSOM ..... 1<sup>ST</sup> RESPONDENT  
LAND REGISTRAR NAKURU ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT  
GLORIA CHEBET BASUBEN ..... 4<sup>TH</sup> RESPONDENT**

**RULING**

**Brief Facts**

1. The Appellant filed the instant application dated July 5, 2023 seeking the following orders:
  1. Spent.
  2. Spent.
  3. That there be a stay of proceedings, ruling and order given by Hon Orange KO on May 17, 2023 in Nakuru Chief Magistrate Court serialized Nakuru ELC No 34 of 2019 pending the hearing and determination of the lodged appeal.
  4. That the Applicant be granted leave to appeal out of time.
  5. That an order as to costs for this application be provided for.



2. The Application was based on grounds set out and supported by the Affidavit of Julia Teriki sworn on July 5, 2023.
3. It was stated that the suit land herein Kipsyenan Farm Block 135 was illegally subdivided into two portions plot 47 and 48. That the suit land belonged to the deceased and further that succession of the whole estate had never taken place.
4. It was further stated that the transfer of the suit property was never done by the deceased and further that the 4<sup>th</sup> Respondent was issued with the title deed of land measuring approximately 4.4 acres.
5. She added that by the time the 4.4 acres was hived off from the suit land, no succession proceeding had been filed in respect of the deceased's estate hence the same was yet to be distributed. It was stated that the issuance of the title of block 47 to the 4<sup>th</sup> Respondent was null and void as the same could only be dealt with under Succession Law.
6. It was further stated that the 4<sup>th</sup> Respondent has trespassed on the suit property and that there is intention to demolish the house thereon. She added that the trial magistrate disregarded the sequence of events of how the 4<sup>th</sup> Respondent illegally subdivided and acquired an improper title deed of plot no 47. That the 4<sup>th</sup> Respondent has threatened to evict her from the suit property
7. In conclusion, the Applicant stated that it would be in the interest of justice and fairness that the orders sought be granted.

#### **Response**

8. The Respondents' did not file any response to the application.

#### **Submissions**

9. Parties did not file any submissions to the application.

#### **Analysis and Determination**

10. This court has looked at the application and is of the view that two issues arise for determination; one, whether this court should stay the proceedings in Nakuru ELC No 34 of 2019 pending the hearing and determination of this Appeal and two whether the Appellant be granted leave to appeal out of time. I shall first interrogate the first issue.
11. In the Court of Appeal case of *David Morton Silverstein V Atsango Chesoni (2002) eKLR* the court held as follows:

'The Court is not laying down any principle that no order for stay of proceedings will ever be made; that would be contrary to the provisions of rule 5(2)(b) of the Court's own rules. But as the court pointed out in the case we have already cited, each case must depend on its own facts and the facts of this particular case before us, as were the facts in the earlier case, do not show that the appeal will be rendered nugatory if we do not grant a stay.'

12. It is this court's view that the power to grant stay of proceedings is a discretionary one exercisable upon consideration of the facts and circumstances of each case. The same should be entertained only in the most deserving cases as it impacts the right to expeditious trial.
13. The Applicant contends that it would only be fair that the proceedings in Nakuru ELC No 34 of 2019 are stayed, to enable the court make an informed decision. She further contends that the 4<sup>th</sup>



Respondent trespassed into the suit property as a result of the impugned ruling which failed to consider the Applicant's evidence.

14. This court notes that from the orders being sought, the Applicant desires that this court exercises its appellate powers to the Ruling while at the same time, staying the proceedings to allow time for appeal. I also note that the Applicant has not provided any evidence to show that the suit land was illegally subdivided. It is this court's view that the Applicant has not established the prejudice it would face if this court was not to grant stay of proceedings in the lower court.
15. Furthermore, this court has perused the memorandum of appeal and is of the view that the grounds as raised by the Appellant can either succeed or not. This court therefore finds that the stay orders sought are not merited. Thus, the prayer for the stay of proceedings is not allowed. On the second issue, regarding leave to file appeal out of time, the Applicant contends that the reason for the delay in filing of the appeal was due to the fact that the 4<sup>th</sup> Respondent destroyed the deceased estate. Section 79G of the *Civil Procedure Act* provides as follows:

'Every appeal from a subordinate court to the High Court shall be filed within a period of thirty days from the date of the decree or order appealed against, excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order

Provided that an appeal may be admitted out of time if the appellant satisfies the court that he had a good and sufficient cause for not filing the appeal in time.'
16. This court has considered the amount of delay from May 17, 2023 to the filing of the application which is about two months. I find that the delay by the Applicant is not so inordinate as to make this court deny her the opportunity to challenge the ruling by the lower court.
17. In the upshot, the application dated July 5, 2023 partially succeeds in terms of the applicant being granted leave to appeal out of time. Costs of the application in the appeal.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 22<sup>ND</sup> DAY OF SEPTEMBER, 2023.**

**A O OMBWAYO**

**JUDGE**

