



**Jama v Mohammed & another (Environment and Land Appeal
E010 of 2021) [2023] KEELC 21085 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21085 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E010 OF 2021
PM NJOROGE, J
OCTOBER 30, 2023**

BETWEEN

SHUKRI ISMAEL JAMA PLAINTIFF

AND

MARIAM MOHAMMED 1ST RESPONDENT

ISIOLO COUNTY GOVERNMENT 2ND RESPONDENT

RULING

1. This application is undated but was filed on 5/9/2023. It seeks the following orders;
 1. This application be certified urgent and the same be heard on priority basis.
 2. That this Honourable court be pleased to issue a Temporary Injunction restraining the 1st Respondent, her agents employees, advocates, auctioneers or any person acting on her behalf on interfering, evicting and/or in any other manner interfering with the property known Plot No. 94 Kiwanjani, Isiolo pending hearing and determination of this Application. The determination of the Applicant's Application dated 20th February, 2023.
 3. That this Honourable court be pleased to issue Temporary Injunction restraining the 1st Respondent, her agents employees, advocates, auctioneers or any person acting on her behalf on interfering, evicting and/or in any other manner interfering with the property Plot No. 94 Kiwanjani, Isiolo. Pending hearing and delivery of the Court of Appeal Judgment.
 4. The costs of the incidental (sic) to this application be provided.
2. The application is supported by the affidavit of Shukri Ismail Jama, the applicant and has the following grounds;



- i. That judgment has been entered in favour of the 1st Respondent and the Applicant stands to be evicted from her suit property and has obtained a warrant of eviction on 8th August, 2023.
 - ii. That the Applicant herein has filed an Appeal in Court of Appeal at Nyeri Civil Appeal No. E113 of 2022 which is pending for delivery of the Judgment on notice.
 - iii. That unless the application and orders sought are heard and granted in the first instance, Applicant will suffer irreparable loss and prejudice.
 - iv. That the Applicant is also reasonably apprehensive that if the 1st respondent is allowed to evict the Applicant and take over the suit property the Appeal shall be rendered nugatory.
 - v. That the applicant is reasonably apprehensive that unless the orders sought herein are granted, the Appeal shall be rendered nugatory.
 - vi. That the Applicant is ready and willing to abide by such terms as this court deems just and expedient in the granting of the orders sought herein.
 - vii. That it is in the wider interest of justice that the orders sought be granted.
3. When the application was slated for interparties hearing on 9/10/2023, Advocate Abdullahi who was holding brief for Advocate Hassan Lakicha, the applicant's advocate asked the court to grant the orders sought in the application because there is a pending judgment at the court of Appeal in Nyeri Civil Appeal No. E113 of 2022.
 4. Advocate Caleb Mwiti who represented the respondents opposed the application. He argued that as the court had already delivered its judgment, it was *functus officio* and that granting the orders sought was tantamount to the court sitting in appeal concerning a matter it had concluded.
 5. If it is true that an appeal has already been heard by the Court of Appeal, this court should be careful so that it does not interfere with issues concerning a matter heard by a more superior court. I opine that the orders sought in this court can best be handled by the court of Appeal.
 6. In the circumstances, I have issued the following orders;
 - a. This application is dismissed.
 - b. Costs shall follow the event and are awarded to the respondents.

DELIVERED IN OPEN COURT AT ISIOLO THIS 30TH DAY OF OCTOBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Mwiti for 1st Respondent.

Miss Nyasani holding brief for Lakicha for Applicants/Appellants.

HON. JUSTICE P.M NJOROGE

JUDGE

