



**Mediheal Hospital and Fertility Centre Limited v County Government of Nandi & 5 others; Tek (Suing as Administrator of the Estate of Peter Kipserem Tek) & another (Interested Parties) (Environment & Land Petition 5 of 2021) [2023] KEELC 21198 (KLR) (30 October 2023) (Ruling)**

Neutral citation: [2023] KEELC 21198 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET  
ENVIRONMENT & LAND PETITION 5 OF 2021**

**MN MWANYALE, J  
OCTOBER 30, 2023**

**BETWEEN**

**MEDIHEAL HOSPITAL AND FERTILITY CENTRE LIMITED ..... PETITIONER**

**AND**

**COUNTY GOVERNMENT OF NANDI ..... 1<sup>ST</sup> RESPONDENT  
JACOB KIPKEMBOI RONO ..... 2<sup>ND</sup> RESPONDENT  
DAVID KIPLAGAT KOSGEI ..... 3<sup>RD</sup> RESPONDENT  
AGUI SONGOK ..... 4<sup>TH</sup> RESPONDENT  
RUTH JEPNGETICH ..... 5<sup>TH</sup> RESPONDENT  
NANDI COUNTY LAND REGISTRAR ..... 6<sup>TH</sup> RESPONDENT**

**AND**

**DYMPHINA CHEMAIYO TEK (SUING AS ADMINISTRATOR OF THE ESTATE OF PETER KIPSEREM TEK) ..... INTERESTED PARTY  
WILFRED KIPTUM KITUR KIMALAT ..... INTERESTED PARTY**

**RULING**

1. Before Court for determination is the Notice of Motion application dated 7<sup>th</sup> September 2023 which seeks orders as here follows;
  - i) Spent
  - ii) Spent



- iii) An order of stay of execution of this Court's order to the effect that Dymphina Chemaiyo Tek (Suing as administrator of the Estate of Peter Kipserem Tek) has demonstrated proprietary rights over Kapsabet Municipality/292 and Wilfred Kiptum Kitur Kimalat has beneficial interested over Kapsabet Municipality 295 pending hearing and determination of the intended appeal to the Court of Appeal.
  - iv) An order of inhibition in respect of Kapsabet Municipality 292 now in the name of Dymphina Chemaiyo Tek (Suing as administrator of the Estate of Peter Kipserem Tek) and Kapsabet Municipality/292 now in the name of Mediheal Hospital and Fertility Centre Limited forbidding any dealings on the said parcels pending hearing and determination of this application and pending hearing and determination of the intended appeal to the Court of Appeal.
2. The application was grounded on grounds interalia that;
    - i) the Applicant is aggrieved of the order of 31<sup>st</sup> July 2023 to the effect that Dymphina Chemaiyo Tek (suing as administrator of the estate of Peter Kipserem Tek has demonstrated proprietary right over Kapsabet Municipality 292 and Wilfred Kiptum Kitur Kimalat has beneficial interests over Kapsabet Municipality 292 and has filed a Notice of Appeal and was in the process of compiling the Record of Appeal.
    - ii) that the Intended Appeal shall be rendered nugatory should the Respondents adversely deal with Kapsabet Municipality 292 and Kapsabet Municipality 295, and the stay of execution granted for 30 days had lapsed and should execution ensue over the properties known as Kapsabnet/municipality 292 and Kapsabet Municipality 295 rendering the Intended Appeal nugatory.
  3. The stay of execution and the orders of inhibition are important for determining the real issue in controversy between the parties since the same will assist the Court of Appeal in determining the real question in controversy between the Applicant and the Respondents.
  4. The application was supported by the supporting affidavit of Godfrey Kipkorir Kiptoo who annexed a copy of the judgment, copy of the Notice of Appeal and copy of letter requesting typed proceedings.
  5. The deponent at paragraph 11 deponed of substantial loss and damages likely to occur if orders are not granted, that the application was made without unreasonable delay and in good faith and that he was willing to furnish any security for performance of the decree, and that the Applicant is in situ.
  6. This application was opposed by the replying affidavit of the first and second interested parties who were, main the Respondents. The 1<sup>st</sup> to 6<sup>th</sup> Respondents having indicated their desire not to participate in the application.
  7. In opposition to the application, the 1<sup>st</sup> Interested Party/Respondent depones that she is in possession of parcel Kapsabet Municipality 292 since 1992, and if the orders are granted, she would suffer loss, but she concedes to any order of status quo been issued. She exhibited electricity bills payment messages and indicated that no deposit as security was availed by the Applicants and urged the Court to dismiss the application.
  8. The 2<sup>nd</sup> Interested replying affidavit Party/Respondent's replying affidavit, which was worded similarly as the 1<sup>st</sup> Interested Party's/Respondent response raising the same issues in opposition.
  9. Parties were directed to file submissions on the application and thereafter highlight the same, and strict timelines were given.



10. On the day of highlighting if emerged that the Applicant had filed a further affidavit without leave, and the Respondents submissions were also said to have been filed out of time.
11. The Court thus did not consider the further affidavit of Geoffrey Kipkorir Kiptoo filed on 27/9/2023 as well as the Respondent's submission which were filed out of time and were not in any event in the Court file.
12. The Applicant submits that the application was brought without unreasonable delay having been filed on 7<sup>th</sup> September 2023 while the judgment was delivered on 31/7/2023.
13. In support of the limb of substantial loss, the Applicant has cited the decision in the case of *James Wangalwa and Another vs Agnes Naliaka Chesoto*.
14. The Applicant submits that they are willing to abide by the security conditions the Court may impose.
15. The Applicants Advocates relied on their submissions and submit that under Section 63 (e) of the *Civil Procedure Act* and Order 42 Rule 6 of the *Civil Procedure Rules* the Court has jurisdiction to grant the orders sought. That the Applicant has established the principles for grant of stay of execution which principles are that the;
  - i) Application has been brought without undue delay.
  - ii) That the Court ought to be satisfied that substantial loss will occur unless the stay orders are granted.
  - iii) Such security as the Court orders for the due performance of the decree.
16. On the order of inhibition the Applicant submits that under Section 68 of the *Land Registration Act*, the Court is empowered to issue an inhibition order and on that basis the Applicant seeks issuance of the inhibition order in respect of Kapsabet/Municipality/292 and Kapsabet Municipality/295 forbidding any dealings on the said parcels pending the hearing and determination of the intended appeal to the Court of Appeal.
17. The Applicant argue that the inhibition would preserve the suit property pending the Intended Appeal.
18. I have analyzed the application the replying affidavits, the submissions on record and the Court frames the following and the Court frames the following as issues for determination;
  - i) whether the orders sought to be stayed are, indeed, orders or findings of the Court, capable of being executed.
  - ii) whether the application meets the threshold for grant of stay of execution.
  - iii) what orders ought to issue?
19. The orders the Applicant seek to stay as per the application are the Courts order to effect that Dymphina Chemaiyo Tek (suing as administrator of the Estate of Peter Kipserem Tek) has demonstrated proprietary rights over Kapsabet/Municipality/292 and Wilfred Kiptum Kitur Kimalat had beneficial interest over Kapsabet Municipality/295.
20. In the main suit whose judgment and orders is now being sought to be stayed; the Respondents in this application. Dymphina Chemaiyo Tek and Wilfred Kiptum Kitur Kimalat were joined in the suit as Interested Parties, as captures at paragraphs 14 and 45 of the said judgment.



21. At paragraph 116 and 117 of the said judgment the Court observed that Interested Parties by their nature could not seek precipatory orders against the principal parties in a matter.
22. At paragraph 129 of the said Judgment the Court made findings in respect of the Interested Parties having demonstrated their interests in the suit properties, their interests being proprietary rights over Kapsabet Municipality 292 by the 1<sup>st</sup> Interested Party/Respondent and beneficial Interested over Kapsabet/Municipality/295.
23. The nature of the above findings do not amount to precipatory order against the Petitioner/Applicant capable of execution in this matter.
24. Thus in answer to issue number 1 the Court finds that the orders sought to be stayed are actually the Court's findings in respect of the Interested Parties interests in Kapsabet Municipality/292 and 295 are not capable of execution in this matter hence consequently cannot be stayed as the ultimate judgment was entered in favour of the Petitioner in any event.
25. On issue number 2, whereas the Applicant has demonstrated compliance with the conditions for grant of stay of execution, the said orders cannot be issued against a finding that is not capable of execution in this matter, the finding having been made in favour of the Interested Parties.
26. On issue number 3, on what reliefs ought to issue, the Court notes from the annexure exhibited by the Interested Parties/Respondents that they are in possession of the Kapsabet/Municipality/ 292 and 295, since the application seeks to preserve the suit property pending appeal and the 1<sup>st</sup> and 22<sup>nd</sup> Interested Parties having demonstrated their occupation of the suit properties, the Court issues an order of status quo on the ground and on the register of parcels number Kapsabet/ Municipality/292 and Kapsabet Municipality/295; in terms that Dymphina Tek and/or her family and Wilfred Kimalat and/or his family shall continue to be in possession of Kapsabet Municipality 292 and Kapsabet Municipality 295 respectively but shall not transfer, lease or charge the said properties till determination of the Intended Appeal by the Applicant Mediheal Hospital and Fertility Centre Limited.
27. Each party shall bear its own costs.

**RULING, DELIVERED AND DATED AT KAPSABET THIS 30<sup>TH</sup> DAY OF OCTOBER, 2023.**

**HON. M. N. MWANYALE,**

**JUDGE**

**In the presence of;**

1. Ms. Tum holding brief for Ms. Lelei for Interested Parties/Respondents
2. Ms. Wanjala holding brief for Ms. Chesoo for Petitioner/Applicant
3. Ms. Odeyo for Respondent

