



Nathan Muhatia Pala t/a Muhatia Pala Auctioneers v Nyamai (Environment and Land Appeal 18 of 2023) [2023] KEELC 20984 (KLR) (26 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20984 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL 18 OF 2023
A OMBWAYO, J
OCTOBER 26, 2023**

BETWEEN

**NATHAN MUHATIA PALA T/A MUHATIA PALA
AUCTIONEERS APPELLANT**

AND

SUSAN A NYAMAI RESPONDENT

*(Being an appeal form the Ruling delivered by the Honorable
Ruth Chebosio Kefa at the Chief Magistrates Court at Nakuru,
delivered on the 16th of August 2023 in Civil suit No.E872 OF 2011)*

RULING

1. Nathan Muhatia Pala trading as Muhatia Pala Auctioneers has come to this court seeking orders that this honorable Court be pleased to issue an order for stay of execution of the Ruling delivered by the honorable Ruth Chebosio Kefa given at Nakuru on the 16th day of August 2023 pending hearing and determination of this Appeal. That the costs of this Application be borne by the Respondent. That any other orders be issued that this honorable Court may deem just and expedient.
2. The application is based on grounds that the Appellant/Applicant is apprehensive that if a stay of execution order is not granted in the interim by the court, the Respondent will proceed to execute the said orders against him which will effectively render this appeal nugatory.
That this Appeal has triable issues and has a high chance of success.
3. That the Appellant stands to suffer irreparably and experience immense loss should the Respondent commence execution proceedings against him.



4. In the supporting affidavit the applicant states he has appealed and his appeal has high chances of success. He is willing to abide by any conditions for stay. The respondent opposed the application by stating that the application did not satisfy the requirement for stay of execution pending appeal.
5. I have perused the application and the response and do find that the ruling appealed from is a dismissal and therefore not capable of being executed and not capable of being stayed.
6. *Western College of Arts and Applied Sciences v EP Oranga & 3 others* [1976] eKLR where the Learned Judges stated thus:

“what is there to be executed under the judgment, the subject of the intended appeal” The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson v Church* the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, it is so ordered.”

7. Similarly, in *Raymond M. Omboga v Austine Pyan Maranga* Kisii HCCA No 15 of 2010, Makhandia, J (as he then was) stated thus:

“The order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order...The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory do not arise...”

8. Consequently, the prayer for stay of execution must fall by the wayside and the same is hereby dismissed.

DATED SIGNED AND DELIVERED AT NAKURU THIS 26TH DAY OF OCTOBER 2023.

A O OMBWAYO

JUDGE

