



**Kiprono v Keriakor (Environment and Land Appeal 29 of 2021)
[2025] KEELC 1190 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1190 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
ENVIRONMENT AND LAND APPEAL 29 OF 2021
MN MWANYALE, J
MARCH 13, 2025**

BETWEEN

KIPTEIKAT NKURRINA KIPRONO APPELLANT

AND

DANIEL KILOKU KERIAKOR RESPONDENT

RULING

1. On 7th October 2024, this court (Washo J) delivered Judgment in respect of this Appeal which judgment dismissed the appeal with costs. The Applicant took out a Notice of Motion Application dated 25th October 2025 seeking stay of execution of the Judgment delivered on 7th October 2025 and the resultant decree pending and hearing of an Intended Appeal he had lodged at the Court of Appeal in line with the Notice of Appeal dated 17th October 2025.
2. A Notice of Preliminary Objection was filed in respect of the Application on the grounds interalia:
 - i. the Application is incurably defective,
 - ii. the supporting affidavit is defective and bad in law,
 - iii. The application contains forged or fraudulently nonexisting or fictitious annexures some documentary evidence is manipulated to mislead or disinform or misinform the honourable court or misuse the court process to get orders for their selfish end,
 - iv. The applicant has approached the court with unclean hands for he has in the month of October 2024 planted sugarcane on the suit land. The Applicant intends to delay eviction in order to get time for the crops to mature for harvest.
3. On 17.12.2024 Directions were issued for the filing of submissions in respect of both the Application dated 25th October 2024 as well as the Notice of preliminary objections and the court thereafter on 3/2/2025 reserved a ruling for both for today. The court has considered the submissions in



relation to the preliminary objections as well as the application and frames the following as issues for determination

- i. whether the preliminary objection as drawn and filed meets the threshold of a preliminary objection and whether it is merited.?
 - ii. whether the application is merited?
4. The Court shall now consider whether the Preliminary objection as filed in this Matter meets the threshold of Preliminary Objections as was observed in the decision in the case of *In Mukisa Biscuit Manufacturer Limited vs Westend Distributors Limited*; the Court held in respect of a preliminary objection, that “so far as I am aware, a preliminary objection consists of a pure point of law which has been pleaded, or which arises by clear implications out of pleadings, and which if argued as a preliminary objection is in the nature of what used to be a demurrer. It raises a pure point of law which is argued on the assumption that all the acts pleaded by the other side are correct. It cannot be raised if any fact has to be ascertained or what is sought is the exercise of judicial discretion....”
5. Similarly in the decision in the case of *Omondi vs National Bank of Kenya Limited and 2 others*; as quoted in the decision of *J. N. and 5 others vs Board of Management St. G. School Nairobi and Another* where it was held that; “a preliminary objection consists of a point of law which has been pleaded or which arises by clear implication out of pleadings and which if argued as a preliminary point may dispose of the suit.....where a Court needs to investigate facts, a matter cannot be raised as a preliminary point. Anything that purports to be a preliminary objection must not deal with disputed facts, and it must not itself derive its foundation from factual information which stands to be tested by normal rules of evidence.”
6. The issues raised as preliminary objections including the issue of forged documents are not pure points of law but issues that need ascertainment of evidence by ordinary course of evidence by way of either viva voce evidence or affidavit evidence. It follows therefrom as drawn the preliminary objection fails to meet the threshold of a preliminary objection as the P/O involves ascertainment of facts through the rules of evidence and P/O must therefore fail, as it hereby does, and it is disallowed.
7. Having dismissed the preliminary objection it follows that the application dated 25th October 2024 is unopposed and the court shall determine whether the same is merited. As observed at paragraph 1 the appeal herein was heard and determined resulting in its dismissal. A dismissal is a negative order. Can a stay of execution issue against a negative order?
8. This question arose and was determined by the Court of Appeal In the case of *Gitundu vs. Wabuku* Civil Application (E024 OF 2021) 2022 KELA KLR 26 August 2022 where at paragraph 10 the learned Judges stated as follows: -
- “Additionally, even if he had the requisite jurisdiction, this court has said time without number that stay orders cannot issue in respect of negative orders, where the court has not ordered any of the parties to perform any task.”
9. In view of the said legal position, the Application before court in so far as it seeks stay of execution of dismissal lacks merit and it is hereby dismissed with costs.

DATED AND DELIVERED AT KILGORIS THIS 13TH DAY OF MARCH 2025.

HON. M.N. MWANYALE

JUDGE



In the presence of

C/A Emmanuel/Slyvia

Mr. Obare for the respondent.

N/A for Mr. Ochwangi for the Applicant duly notified

