



Maganjo & Company Limited & 3 others v Maregwa & 3 others (Environment and Land Appeal E041 of 2022) [2023] KEELC 20801 (KLR) (17 October 2023) (Ruling)

Neutral citation: [2023] KEELC 20801 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL E041 OF 2022
LC KOMINGOI, J
OCTOBER 17, 2023**

BETWEEN

**MAGANJO & COMPANY LIMITED 1ST APPELLANT
PETER KARANJA THOU 2ND APPELLANT
HANNAH WANJIRU THOU 3RD APPELLANT
HAMUD MOHAMMED OSMAN 4TH APPELLANT**

AND

**NJOGU MAREGWA 1ST RESPONDENT
NAMBIRI MAGU 2ND RESPONDENT
WINFRED NJOGU MWANIKI 3RD RESPONDENT
PATRICK MWANIKI MBUOGO T/A MAGANJO & COMPANY 4TH
RESPONDENT**

RULING

1. This is the Notice of Motion dated 30th August 2023 brought under;

Order 45 Rule 1 of the *Civil Procedure Rules*, Section 3A and 80 of the *Civil Procedure Act*, The *Judicature Act*, *High Court (Practice and Procedure) Rules* and all other enabling Provisions of Law

2. It seeks orders;

1. Spent.
2. Spent.



3. That this Honourable Court be pleased to reinstate and extend the orders of stay of execution issued on 20th December 2022 pending the hearing and determination of this application.
 4. That This Honourable court be pleased to extend the time for the 4th Appellant to deposit the security in the sum of Kshs.500,000 by Seven (7) days from the date of such extension.
 5. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out in paragraphs 1 to 8.
 4. The Application is supported by the affidavit by Hamud Mohamed Osman, the 4th Appellant/Applicant, sworn on the 30th August 2023.
 5. In response the Respondent filed a Preliminary Objection and a Replying Affidavit sworn on the 8th September 2023.
 6. I have considered the Notice of Motion and the Affidavit in Support, the responses thereto, the rival submissions and the authorities cited. The issue for determination is whether this application is merited.
 7. On the 20th December 2022, this court vide a comprehensive ruling, granted the Appellants stay of execution on some conditions. They were to comply within forty five (45) days.
 8. On the 6th March 2023, the Appellants had not complied with the orders and the court granted them seven (7) days to do so failure to which the stay orders would lapse automatically.
 9. As things stand, there are no orders capable of extension. When the matter came up before the Duty Judge on 30th August 2023 she did not have the benefit of perusing the physical file.
 10. This could be the reason why she granted interim orders of stay.
 11. I agree with counsel for the Respondent this application is res judicata.
 12. I find this application to be an abuse of the court process and the same is dismissed with costs to the Respondents.

DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 17TH DAY OF OCTOBER 2023.

L. KOMINGOI

JUDGE

