



**Ibrahim & 8 others v Laptia & another (Land Case 53 of 2021)
[2023] KEELC 21838 (KLR) (30 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21838 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
LAND CASE 53 OF 2021
FO NYAGAKA, J
NOVEMBER 30, 2023**

BETWEEN

**CHEPARWASI IBRAHIM 1ST PLAINTIFF
EUNICE C. IBRAHIM 2ND PLAINTIFF
CHRISTINE IBRAHIM 3RD PLAINTIFF
MARGARET KEKE 4TH PLAINTIFF
MONICA SOMPOL 5TH PLAINTIFF
MARY CHEYECH 6TH PLAINTIFF
RIDAH CHEPATEI 7TH PLAINTIFF
GLADYS KURKOR 8TH PLAINTIFF
SOPHIA CHEROP 9TH PLAINTIFF**

AND

**CHRSTOPHER LAPTIA 1ST DEFENDANT
JULIUS R. CHEMERII 2ND DEFENDANT**

RULING

1. By a Notice of Motion dated 27/07/2023, Defendants moved this Court under Order 42 Rule 6 of the *Civil Procedure Rules*. They sought the following orders:-
 - a. ...Spent
 - b.Spent



- c. That this Honourable Court be pleased to grant a stay of execution of the judgment and decree delivered on 11/07/2023 and all consequential orders therefrom pending the hearing and determination of the appeal to be filed by the Defendants/Applicants.
 - d. Such orders be made as are just and expedient in the interest of justice.
 - e. Costs of this Application be in the cause.
2. The Application was based on the grounds that the Applicants were aggrieved by the judgment of the court delivered on 11/07/2023 and were in the process of lodging a memorandum of appeal; the appeal had high chances of success; the applicants will suffer substantial loss if the orders sought were not granted and in particular that the 2nd Defendant was likely to be evicted from the suit land if stay was not granted; the balance of convenience tilted in favour of the Applicants; that the Respondents were likely to execute the decree and subject the applicants to substantial loss and render the appeal nugatory; the applicants were willing to provide security for the appeal as the court would deem fit; and the interests of justice demanded the grant of the application.
 3. The Application was supported by the Affidavit of one Christopher Laptia sworn on 27/07/2023. In it he deponed to all the contents of the grounds of the application. He annexed to the Application a copy of the Notice of Appeal and marked it as CL1, a copy of the letter requesting for proceedings and certified copies of proceedings as CL2.
 4. The Plaintiff opposed the application vide a Replying Affidavit she swore on 16/08/2023 and filed on 17/08/2023. She annexed the copy of the decree and marked it as CI-1. She deponed that the court had found the land registered in trust for her and the co-plaintiffs and that the sale to the 2nd Defendant was fraudulent and should be cancelled, he vacates the land failing of which he be evicted. That the Court found the subdivision of parcel No. 324 to parcel Nos. 1382 and 1382 were to be cancelled and the title reverts to the original while the registration of parcel West Pokot/Tapach/156 was to be rectified.
 5. She deponed further that the court had issued an order of inhibition on the parcels of land pending the completion of the succession process in relation to the estate of the late Lokwalo Sompol. That the Applicants had not annexed a copy of the memorandum of the intended appeal and they had not demonstrated the substantial loss they would suffer if the orders sought were not granted. She stated that the filing of an appeal was not an automatic basis for stay of execution of a judgment or order.
 6. That the applicants had not shown sufficient cause to warrant the stay of execution. She annexed as CI-2, 3, 4, and 5 to the affidavit copies of the extracts of titles No. West Pokot/Chebon/324, 1381 and 1382 as well as West Pokot/Tapach/156 which showed that the decree had been perfected. She deponed that she and all the plaintiffs were entitled to the user of the land yet the 1st Defendant had denied them the same in respect of the two parcels. That they were the ones instead who would suffer loss by being denied the fruits of judgment.
 7. That it was admitted by the 2nd Defendant/Applicant that he built a house on the parcel No. 1382 during the pendency of the trial and he testified as much. Further, that he did not bother to consult the Plaintiffs first. That the issue of offering security was not possible as it was not quantified which one that would be. That the application was only filed 17 days after judgment yet no stay of execution was sought immediately after judgment. That the application had been overtaken by events since the registers have been rectified as per the decree of the Court.
 8. The Application was canvassed by way of written submissions. The Applicants filed theirs on 07/08/2023 while the Respondents filed theirs on 18/08/2023.



9. The Court has considered the application, the law and the rival submissions. It shall infuse the submissions in the analysis below as it determines the application.
10. The issues for determination are whether or not the Application is overtaken by events, whether or not it is merited and who to bear the costs of the same.
11. In regard to whether or not the Application has been overtaken by events, the meaning of the phrase “overtaken by events” is that whatever is sought to be acted upon has come too late in the day because the event sought has already occurred.
12. In the instant case, the judgment of this court was delivered on 11/07/2023 and a decree issued thereafter. The decree had many limbs or reliefs thereto. The Plaintiffs deponed that the decree had been perfected. They annexed as CI-2, 3, 4 and 5 copies of the extracts of the register to show that indeed the orders of the court in terms of rectification of the register and registration of the orders of inhibition had been complied with by being effected on the register. On their part the Applicants did not file any affidavit in response to the deposition to contradict it.
12. This Court is of the humble opinion that once the Respondents raised on oath the issue of the perfection of the decree and they demonstrated as much, and the Applicants did not in any way offer any contrary fact on oath, it means that the fact deponed to was true hence it stands unchallenged. The Respondents annexed, among others, extracts of title and marked them as CI -2, 3, 4 and 5 to demonstrate the perfection. I have carefully studied the annextures. Indeed, they indicate that the title deeds in respect of parcel Nos. West Pokot/Chebon/1381 and 1382 respectively have been cancelled and in their stead the register of parcel No. West Pokot/Chebon/324 been restored, registered in accordance with the decree of the court and an inhibition registered accordingly. It is the same case with land parcel No. West Pokot/Tapach/156 whose register has been rectified and an inhibition registered accordingly. All these the Applicants did not refute on oath.
13. Moreover, the decree annexed as CI-1 at paragraph (b) reads that the 2nd Defendant should be ordered to move out of the parcel number West Pokot/Chebon/1382 and in default be evicted therefrom. When that is compared with the deposition in paragraph 13 of the Replying Affidavit in which the Respondents stated that the decree had since been perfected and the Applicants remained silent on it, this Court can only deduce that even the eviction must have taken place.
14. In *Daniel Kibet Mutai & 9 others v Attorney General* [2019] eKLR the Court of Appeal held:
15. Similarly, in the case of *Peter O. Nyakundi & 68 others v Principal Secretary, State Department of Planning, Ministry of Devolution and Planning & another* [2016] eKLR Odero, J addressing a claim where the Attorney General as the respondent failed to file a replying affidavit stated:

“As stated earlier the Respondents did not file any Replying Affidavit to challenge and/or controvert the sworn averment by the Petitioners that they were victims of the post-election violence. Ground of Opposition which were filed are only deemed to address issues of law. They are general averments and cannot amount to a proper or valid denial of allegations made on oath. (see *Mereka & Co. Advocates Vs Unesco Co. Ltd* 2015 eKLR, *Prof Olaka Onyango & 10 others vs Hon. Attorney General Constitution Petition No. 8 of 2014* and *Eliud Nyauma Omwoyo & 2 others –vs Kenyatta University*). The Respondents have failed to refute specifically the allegations in the Petitioner’s sworn affidavit in support. Failure to file a Replying Affidavit can only mean that those facts are admitted. Therefore, in the absence of any evidence to the contrary I find that the petitioners are indeed victims of the 2007/2008 post-election violence.”



(34) The position before us is that the appellants averred to certain facts under oath in an affidavit. These facts were not controverted by the respondents either through an affidavit in response or through cross examination. An affidavit is sworn evidence. It occupies a higher pedestal than grounds of opposition that are basically issues of law intended to be argued. Two things flow from this. First, by the mere fact of the affidavits not having been controverted, there is an assumption that what is averred in the affidavit as factual evidence is admitted. Secondly, a question arises regarding the weight or probative value of the averred factual evidence.”

16. In the instant case, the Applicants did not address the issue of perfection of the decree by way of factual oath or even in their submissions. The Respondents submitted too not on this issue. But having demonstrated perfection to some extent but deponed on the whole as being so, it leaves the Court to believe them. Thus, this Court hereby finds that the fact of perfection of the decree was truth as it was stated. It means that there is nothing left for this Court to consider to stay the execution thereof except the issue of costs. This has not been raised by the Applicants. It means that the entire application has been overtaken by events. It means further that I need not take time to consider the merits thereof or not as that would be a waste of precious judicial time. I can only dismiss the same with costs to the Respondents.

17. It is so Ordered.

RULING DATED, SIGNED AND DELIVERED AT KITALE VIA EMAIL THIS 30TH NOVEMBER, 2023.

HON. DR. IUR FRED NYAGAKA

JUDGE

