



**Kubai v Permanent Secretary Ministry of Public Health & 2 others;
National Land Commission (Interested Party) (Petition 145 of 2018)
[2023] KEELC 21870 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21870 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
PETITION 145 OF 2018
A OMBWAYO, J
NOVEMBER 24, 2023**

BETWEEN

CHRISTINE KUBAI PETITIONER

AND

**PERMANENT SECRETARY MINISTRY OF PUBLIC HEALTH 1ST
RESPONDENT**

THE COUNTY GOVERNMENT OF NAKURU 2ND RESPONDENT

ATTORNEY GENERAL 3RD RESPONDENT

AND

THE NATIONAL LAND COMMISSION INTERESTED PARTY

RULING

1. This ruling is in respect of the Applicant’s Notice of Motion Application dated 17th October, 2023. The said application is expressed to be brought under Order 42 Rule 6 of the *Civil Procedure Rules* 2010. The application was filed under Certificate of Urgency and is seeking orders that this Honourable Court be pleased to stay the execution of the decree that has been issued in respect of the judgment delivered herein on 5th May, 2022 and any other order that may be issued pursuant thereto, pending appeal. Lastly, the applicant prays for costs.
2. The Application is based on the grounds on its face and supported by the affidavit sworn by the applicant, one John Karanja Kihagi. The Supporting Affidavit is sworn on the 17th October, 2023. According to the applicant, the Court on 23rd October, 2023 gave directions in respect of service of the Application and filing of responses and submissions by the parties. The Applicant deposes that he is the County Executive Committee Member Lands, Physical Planning, and Housing &



Urban Development of the 3rd Respondent/Applicant herein conversant with the facts of this suit and therefore competent to swear this affidavit. It is his disposition that judgment in this matter was delivered on 5th May, 2022 and a decree subsequently issued on 6th July, 2022.

3. It is further his disposition that the 3rd Respondent/Applicant obtained some months after the judgment had been delivered new and important information that demonstrates that the Petitioner/Respondent had sanctioned the sale of the disputed property to the then Maai Mahiu Health Centre Committee.
4. He contends that the 3rd Respondent/Applicant on receiving the information moved with speed to file a Notice of Motion Application seeking a review of the judgment issued on 5th May, 2022. The Applicant further contends that a ruling on the application was delivered on 22nd September, 2023 dismissing the 3rd Respondent's/Applicant's application.
5. He deposes that the 3rd Respondent/Applicant being aggrieved by the decision of this Honourable Court has preferred an appeal against the said ruling. The Applicant further deposes that the 3rd Respondent/Applicant has an arguable appeal with high probability of success. He contends that if this Honourable Court does not stay execution of the decree herein, the appeal will be rendered nugatory and the 3rd Respondent/Applicant will suffer irreparable damage and loss. The Applicant contends that it is in the interest of justice that the Stay of Execution in the Superior Court should be granted as prayed herein, pending the lodging, hearing and determination of the Applicant's intended Appeal.
6. The respondent filed a response that judgment was entered on 5th May 2022 and that no appeal has been preferred against the judgment and that the ruling dated 22nd September 2023 dismissed an application for review and therefore there is nothing to be stayed.
7. Both parties filed submissions that I have carefully read and considered. The main issue is whether the application is competent
8. This Court has discerned the Applicant's Notice of Motion Application dated 17th October 2023 and the replying affidavit sworn on 3rd October 2023 and do find that the applicant has not appealed against the decree and judgment whose execution she seeks to stay and therefore the application is a non-starter. Moreover, the order issued on 22nd September 2023 was a negative order of dismissal and cannot be executed and therefore not capable of being stayed. The Application dated 17th October 2023 is incompetent therefore is dismissed with no orders as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24TH NOVEMBER, 2023

A .O .OMBWAYO

JUDGE

