



**Nganga v Abdi (Sued as the Legal Administrator Ad- Litem of the Estate of Fatuma Hersi Ali (Deceased)) (Environment & Land Case 145 of 2019) [2023] KEELC 21740 (KLR) (24 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21740 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 145 OF 2019  
A OMBWAYO, J  
NOVEMBER 24, 2023**

**BETWEEN**

**JOSEPH KIMANI NGANGA ..... PLAINTIFF**

**AND**

**ZAINAB UMAR ABDI ..... DEFENDANT**

**SUED AS THE LEGAL ADMINISTRATOR AD- LITEM OF THE ESTATE OF  
FATUMA HERSI ALI (DECEASED)**

**RULING**

1. The defendant prays that this Honorable Court do issue orders stay of execution of the judgment and decree issued on 5<sup>th</sup> October, 2023 in Nakuru HC ELC No. 145 of 2019 and all consequential orders therein pending the hearing and determination of the relevant appeal filed in the Court of Appeal and that the costs of this application be provided for.
2. The application is based on grounds that the judgment in Nakuru HC ELC No, 145 of 2019 was delivered against the applicant on the 5<sup>th</sup> October, 2023. That the applicant is aggrieved by the said judgment and decree and has filed an appeal against the same in the Court of Appeal and has also filed this application for stay pending appeal. That unless stay is granted herein the applicant stands to be prejudiced and substantial and undue loss since the respondent may execute the judgment e applicant's title to the land parcel
3. That the applicant has a good appeal with a high chances of success that is clearly evident from the memorandum of appeal and the applicant's documents and it is therefore necessary that this application be considered otherwise the appeal may be rendered nugatory, superfluous and a mere academic exercise. That the applicant has filed this application without undue delay and is ready to deposit reasonable security for the costs of the appeal. In the supporting affidavit the applicant states



that she is the legal administrator ad-litem of the estate of Fatuma Hersi Ali (deceased). The said Fatuma Hersi Ali (deceased) is the registered owner LR No. Dundori/ Mugwathi Block 2/168. The respondent filed this suit and judgment was delivered against her in the matter on the 5<sup>th</sup> October, 2023.

4. Being dissatisfied and aggrieved by the judgment and decree she has preferred and filed an appeal to the Court of Appeal. The decree and order of the Honorable Court is drastic and draconian to the extent that their said title deed be cancelled. The respondent may execute the judgment at any time and has already begun to make efforts to obtain decree in order to execute and cancel their title deed.
5. They do have a good and arguable appeal that has merit as can be seen from the memorandum of appeal and both the appeal and application for stay pending the appeal have been filed timeously. In the circumstances it is necessary that she be issued with an order of stay of execution of the said judgment and decree pending the hearing and determination of the appeal. She has filed this application without unreasonable delay and is ready to deposit reasonable security for the costs of the appeal. The estate of the deceased stands to suffer undue, substantial and irreparable loss unless stay orders are granted. Unless stay orders are granted the appeal shall be rendered nugatory and superfluous. The application is made in good faith and she is willing to deposit reasonable security for the costs of the appeal.
6. The respondent filed grounds of opposition stating that the Applicant has not shown what prejudice if any she shall suffer if the stay is not granted. The Respondent should not be kept away from the fruits of his successful litigation without payment of security. The applicant should pay at least Kshs.2,5 million or any other sufficient sum to be determined by court to the Advocates for the respondent as security for costs.
7. I have considered the application and do find that the application has been made without inordinate delay and that the orders made by this court may cause substantial loss to the applicant if executed. The interest of justice in this matter will serve if a stay of execution is granted on condition that security is deposited in court. I do grant stay of execution pending appeal on condition that the applicant deposits security of the value of Kshs one million (Ksh.1,000,000) in court or a cash security of Kshs Five Hundred Thousand (500,000). Cost of the application in the appeal.

**RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 24<sup>TH</sup> DAY OF NOVEMBER 2023.**

**A. O. OMBWAYO**

**JUDGE**

