



Technology Investments Limited v Patel & 4 others (Environment & Land Case 55 of 2020) [2023] KEELC 21692 (KLR) (22 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21692 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 55 OF 2020
SM KIBUNJA, J
NOVEMBER 22, 2023**

BETWEEN

TECHNOLOGY INVESTMENTS LIMITED PLAINTIFF

AND

HASMUKH K PATEL 1ST DEFENDANT

REGISTRAR OF LANDS, MOMBASA COUNTY 2ND DEFENDANT

SOS CHILDRENS VILLAGE KENYA 3RD DEFENDANT

REGISTERED TRUSTEES OF SHRI CUTCH SATSANG 4TH DEFENDANT

V NARAN MULJI PROPERTIES LIMITED 5TH DEFENDANT

RULING

1. The plaintiff filed the notice of motion dated 12th April 2023 seeking for inter alia, the following prayers:
 - a. Pending the hearing and determination of the intended appeal, an order of stay of execution of the judgement delivered on the 29th March 2023 and all consequential processes arising therefrom.
 - b. such other orders and or further relief as the court may deem appropriate.
 - c. Costs to be provided for.

The application is premised on the fourteen (14) grounds on its face, and supported by the affidavit of Michael Munyao, a director of the plaintiff company, sworn on the 12th April 2023.

2. The application is opposed by the 1st defendant through the replying affidavit sworn by Hasmukh- K. Patel on the 24th May 2023.



3. That when the application came up in court on the 24th April 2023, the counsel for the plaintiff and 1st defendant indicated that they were consulting on the application and were likely to arrive at a consent. The matter was fixed for mention on 10th July 2023 to record a consent. On that day however, the counsel notified the court that their attempts to settle had failed. The court then issued directions on filing and exchanging replies and submissions.
4. The learned counsel for the plaintiff and 1st defendant filed their submissions dated the 26th September 2023 and 18th September 2023 respectively, which the court has considered.
5. The following are the issues for the court's determinations:
 - a. Whether the plaintiff has met the threshold for stay of execution pending appeal to issue.
 - b. What orders to issue.
 - c. Who pays the costs of the application?
6. The court has carefully considered the grounds on the application, affidavit evidence filed, submissions by the learned counsel, superior courts decisions cited thereon and come to the following findings:
 - a. The court rendered its decision through the judgement delivered on the 29th March 2023 in favour of 1st defendant's in ELC No. 55 OF 2020, plaintiff in ELC No. 179 of 2020 that are consolidated, and against the plaintiff/applicant in the instant application as seen at paragraphs 57 to 59 of the said judgement. Being aggrieved, the plaintiff herein filed the Notice of Appeal dated the 4th April 2023 that was lodged with the Deputy Registrar on the 6th April 2023, and then filed the instant application dated the 12th April 2023.
 - b. That from the dates set out in (a) above it is clear that only about fifteen (15) days had lapsed from the date of the delivery of the judgement to the filing of the application. The application was therefore filed timeously and without undue delay.
 - c. The provisions of Order 42 Rule 4(2) of the Civil Procedure Rules guide the courts in determining where an applicant for stay orders pending appeal has met the threshold required. Superior courts have in many decisions including the Court of Appeal in Butt versus Rent Restriction Tribunal [1979] eKLR, expressed themselves on the general principle in granting or rejecting an application for stay orders. The plaintiff has at grounds 10 and 11 of the application expressed preparedness to adhere to any conditions on security for due performance of the decree that the court may direct. It has further indicated that it will not dissipate or transfer the suit property during the period the appeal will be pending. The 1st respondent has at paragraph 6 of his replying affidavit expressed his preparedness to accept a conditional stay of execution order being issued. He has gone further to propose the conditions the court should issue to include inter alia that the plaintiff to deposit the title deed for the suit property in 14 days; plaintiff to undertake not to transfer or otherwise deal with the said property; Record of Appeal to be filed within 60 days and this order to be registered with the Land Registrar. The proposal is however not clear on where the suit land's title should be deposited, but his counsel has at paragraphs 10 and 13 of their submissions opined that it should be deposited with the court or alternatively security in terms of the value of the suit property be deposited in the advocates interest earning account. On the timelines for filing the Record of Appeal, that is not for this trial court, but for the Court of Appeal, as the appellate court, to give directions on.
 - d. That even though the plaintiff has not particularized the nature of the substantial loss that it is likely to suffer, the court has taken note of the 1st defendant's expressed readiness to



accept conditional stay order being issued, the overriding objective and duty of the court under sections 1A and 1B of the *Civil Procedure Act* chapter 21 of Laws of Kenya and the decision in *Nicholas Stephen Okaka & Another versus Alfred Waqa Wesonga* [2022] eKLR. The court finds the application has merit.

- e. That on costs of the application which is obviously guided by section 27 of *Civil Procedure Act* chapter 21 of Laws of Kenya that it follows the events unless otherwise directed by the court on good cause, and in view of the pending appeal before the Court of Appeal, I find this an appropriate instance where costs should abide the outcome of the appeal.
7. In the upshot of the foregoing determinations, the court finds and orders as follows:
- a. That an order of stay of execution in terms of prayer (c) of the notice of motion dated the 12th April 2023 is hereby granted on the following three (3) conditions;
 - i. That the parties, and specifically the plaintiff to ensure the status on the land and title to the suit property remains the way it was as at the 29th March 2023 when the judgement was delivered.
 - ii. That an inhibition order in terms of *section 68* of the *Land Registration Act* No. 3 of 2012 is hereby issued to be registered against the title of the suit property upon presentation of a copy of this order to the Land Registrar, to remain in force pending the hearing and determination of the appeal.
 - iii. That the plaintiff to surrender the title document over the suit property to the Land Registrar Mombasa for custody within seven [7] days from the date of this ruling for safe keeping pending the hearing and determination of the appeal.
 - b. The costs of the application to abide the outcome of the appeal.

It is so ordered.

DATED AND VIRTUALLY DELIVERED THIS 22ND DAY OF NOVEMBER 2023.

S. M. KIBUNJA, J.

ELC MOMBASA.

In the presence of:

Plaintiff: None.

Defendants: Mr. Ogandah for Onyang for 1st Defendant, Ms Mango for 3rd to 5th Defendants and M/s Waswa for 2nd Defendant.

Wilson – Court Assistant.

S. M. KIBUNJA, J.

ELC MOMBASA.

