



REPUBLIC OF KENYA



**KENYA LAW**  
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**Radius Investment Company v Maalim (Environment and Land Appeal  
8 of 2023) [2023] KEELC 22278 (KLR) (18 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22278 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL 8 OF 2023  
PM NJOROGE, J  
DECEMBER 18, 2023**

**BETWEEN**

**RADIUS INVESTMENT COMPANY ..... APPELLANT**

**AND**

**SALAT ABDI MAALIM ..... RESPONDENT**

**RULING**

1. This application is dated 24/10/2023. It seeks orders:-
  1. That this application be certified as very urgent and the same be heard as a matter of priority.
  2. That there be a stay of execution of Isiolo Chief Magistrates Court Elc No. 006 of 2023 pending the hearing and determination of this application.
  3. That there be a stay of execution of Isiolo Chief Magistrates Court Elc No.006 of 2023 pending hearing and determination of this Appeal.
  4. That this Honourable Court do issue an order of injunction against the respondent in respect to UNS Commercial Plot No.B (ISL/117/98/229) pending hearing and determination of this application.
  5. That this Honourable Court do issue an order of injunction against the respondent in respect to UNS Commercial Plot No. B(ISL/117/98/229) pending hearing and determination of this application.
  6. That this Honourable Court do issue an order of inhibition against the respondent in respect to UNS Commercial Plot No. B (ISL/117/98/229) pending hearing and determination of this appeal.
  7. That costs for and incidental to the application be borne by the respondent.



2. The application is supported by the affidavit of Nathan Maingi and has the following grounds:-
  - a. That ruling was issued by Hon Tsimonjero on October 23, 2023 in which he indicated that the application has no cause of action against the respondent in Isiolo ELC NO. 006 of 2023.
  - b. That this was despite the Applicant herein giving overwhelming evidence in respect to its claim.
  - c. That the Respondent herein through dubious means acquired a judgment where the appellant was not a party to in ELC Case No. 71 of 2018.
  - d. That the appellant is the legal owner of land parcel Plot No. B(ISL/117/98).
  - e. That the plaintiff has extensively developed the same by erecting a fence and constructing a tank.
  - f. That the respondent with the help of police has proceeded to invade the applicant's property, destroying it and started construction on the said property.
  - g. That it is in the interest of justice that the orders sought herein are awarded as the same is meant to safe guard the property in issue.
  - h. That if orders sought herein are not awarded the same will render the applicants appeal nugatory.
  - i. That if the orders sought herein are not awarded the applicant herein will suffer irreparable damages.
  - j. That both the applicant's application and appeal have overwhelming chances of success.
  - k. That the application has been brought without undue delay.
3. On 7/11/2023, the court directed the parties to canvass the application by way of Written Submissions. The applicant was given 14 days to file written submissions and the respondent was to do so within 14 days after receipt of the applicant's submissions.
4. On 18/12/2023, the applicant had not filed its submissions but the respondent had done so. Advocate Ondari, for the respondent, asked the court to dismiss the application for disobedience of this court's order and for failure to canvass the application.
5. In the circumstances, I issue the following orders:
  - a. This application is dismissed.
  - b. Costs shall follow the event and are awarded to the respondent.

**DELIVERED IN OPEN AT ISIOLO THIS 18TH DAY OF DECEMBER, 2023 IN THE PRESENCE OF:**

Court Assistant: Balozi

Ondari for the Respondent

Miss Nyasani hb for Mugambi for the Appellant

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

