



**Ngetich v Barngetuny & 2 others (Environment & Land Case
23 of 2021) [2023] KEELC 22297 (KLR) (11 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22297 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 23 OF 2021
MN MWANYALE, J
DECEMBER 11, 2023
FORMERLY ELDORET E & L CASE NO 122 OF 2014**

BETWEEN

STANLEY KIPRUTO NGETICH PLAINTIFF

AND

MARY BARNGETUNY 1ST DEFENDANT

PETER TALAM 2ND DEFENDANT

JOSEPH TALAM 3RD DEFENDANT

RULING

1. *Vide* his application dated 18/10/2023 Stanley Kipruto Ngetich seeks orders of stay of execution of the judgment and decree delivered on 25th September, 2023 pending hearing and determination of an intended appeal that he had lodged against the judgment.
2. The application is premised on grounds that he has filed a Notice of Appeal which is an arguable appeal, and the Appeal will be rendered nugatory if stay is not granted, hence occasioning substantial loss and irreparable damage, the Applicant is ready and willing to abide by the conditions that may be imposed on security for due performance of the Decree, that application has been made without any unreasonable delay and in utmost good faith; hence interests of justice would be best served if the application is allowed.
3. The application is supported by the affidavit of the Applicant who reiterates the grounds in support of the application and has annexed the Judgment, the Notice of Appeal and a letter requesting for typed proceedings, as well as a Memorandum of Appeal.



4. The Applicant as the deponent depones that he has a viable appeal and that the decree is likely to be executed; and urges Court to exercise its discretion to allow the application, in the interest of justice and fairness.
5. The application is strenuously opposed by the Replying Affidavit of Joseph Tallam, the 2nd Defendant/ Respondent. The Respondents depones that the application lacks merit, is bad in law, is frivolous and an abuse of the Court process.
6. The Respondent depones of;
 - i) non – service of the Notice of Appeal within 7 days as required by the Court of Appeal Rules and hence the Right of Appeal by the Appellant is foreclosed for non -service;
 - ii) the Application thus does not meet the conditions and threshold of grant of stay pending appeal.
 - iii) hat the decision should be deemed lawfully and regular until overturned by a Superior Court.
 - iv) no demonstrations of substantial loss nor nugatory has been shown to the Court; since the judgment does not affect possession, occupation and use of the land noting that has been the status for the past 50 years and
 - iv) that the decree has been implemented by the County Land Registrar through cancellation of the irregular entries and reverting the Land to Nandi/kipkaren/335; hence the motion has been overtaken by events, and a search was annexed to this effect.
7. The application was argued orally by Mr. Kiprono Learned Counsel for the Plaintiff/Applicant and Mr. Kenei Learned Counsel for the Defendant/Respondent.
8. The Court notes from Annexure JT2 on the affidavit of Joseph Talam the Respondent that the decree herein has been executed by reversal of the entries in the Register making the motion to be overtaken by events, but shall consider aspects of the application taking into account the foregoing.
9. Mr. Kenei argued that since there was no service of the Notice of Appeal, there is no proper appeal before the Court of Appeal for a stay to be granted.
10. Mr. Kiprono submitted the Court that the issue of the non-service of the Notice of Appeal is any issue to be decided by the Court of Appeal.
11. The Court agrees with Mr. Kiprono learned Counsel of the Respondent that the jurisdiction to deal with the validity or otherwise of the Notice of Appeal under the Court of Appeal Rules is not for the Trial Court but for the Appellate Court, as was held in the decision in the case of Issa Shekuwe Shali vs Buscar Limited.
12. As the application has been overtaken by events, by the rectification of the Register as per Annexure JT2, there is nothing to determine in the application, but noting the apprehension of the Applicant, in the event the Applicant transfers the suit property to a 3rd party, the Court orders for a maintenance of status quo on the ground as it is currently and on the register of Nandi/kipkaren Salient/335 pending hearing and determination of the Intended Appeal, which Appeal should be filed and served within 60 days from the date hereof failure to which the status quo orders shall lapse.

RULING, DELIVERED AND DATED AT KAPSABET THIS 11TH DAY OF DECEMBER, 2023.

HON. M. N. MWANYALE,

JUDGE



In the presence of;

Mr. Serem holding brief for Mr. Kiprono for Applicant

Mr. Kenei for Respondent

