



**Sarinke (Suing as the legal representative of the Estate of Nkutoto Ene Sarinke (Deceased) v Sarinke & 4 others (Environment & Land Case 49 of 2018) [2023] KEELC 22021 (KLR) (5 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22021 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 49 OF 2018  
MN GICHERU, J  
DECEMBER 5, 2023**

**BETWEEN**

**MUNTELEU MARIDADI SARINKE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NKUTOTO ENE SARINKE (DECEASED) ..... PLAINTIFF**

**AND**

**LAMO OLE MARIDADI SARINKE ..... 1<sup>ST</sup> DEFENDANT  
SANA EK LAMO SARINKE ..... 2<sup>ND</sup> DEFENDANT  
EVANS MBOTO OMBUI ..... 3<sup>RD</sup> DEFENDANT  
LAND REGISTRAR, KAJIADO ..... 4<sup>TH</sup> DEFENDANT  
ATTORNEY GENERAL ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 5/10/2022. The motion which is by the plaintiff is brought under Order 42 Rule 6 of the *Civil Procedure Rules*, Section 3A of the *Civil Procedure Act* and all other enabling provisions of the law. It seeks two orders namely,
  - i. Stay of execution of the orders and further proceedings in this suit until the pending appeal being appeal no. E306/2022 at the court of Appeal in Nairobi is heard and determined.
  - ii. Costs of this application be provided for.
2. The motion is based on three (3) grounds, an affidavit sworn by the plaintiff dated 5/20/2022 and two annexures. The gist of the above material is that the plaintiff is aggrieved by the judgment of this court dated 6/6/2022 and has appealed to the Court of Appeal. He fears that his appeal will be rendered



nugatory and that he will suffer irreparable harm if the orders sought are not granted. The decision of the court has rendered him and his sisters destitute and homeless.

3. The motion is opposed by the defendants whose counsel has filed a replying affidavit dated 11/10/2022 in which he deposes as follows.

Firstly, the affidavit by the plaintiff is not commissioned rendering it fatal under the law.

Secondly, the orders sought are not certain as they have been amended by hand and pen.

Thirdly, there is no appellant in this case and this court is now functus officio having already made a determination in dispute.

4. Counsel for the parties filed written submissions on 26/5/2023 and 6/10/2023.

5. I have carefully considered the motion in its entirety including the grounds, the affidavits, the annexures, the submissions and the law cited therein. I find that the motion has no merit for the following reasons.

Firstly, the plaintiff and his sisters are not in occupation of the suit land. They are also not the registered owners of the land. If they were in occupation, probably an order of stay would make sense. In the current circumstances, no stay should issue because there is nothing to stay. The plaintiff does not stand to suffer any substantial loss.

Secondly, the plaintiff has not made any commitment as to the due performance of the decree. In fact, this motion seems to have been triggered by the service upon the plaintiff of the defendants' bill of costs.

The plaintiff's motion does not meet the threshold of grant of stay of execution in order 42 Rule 6 (2) of the [Civil Procedure Rules](#). I dismiss it with costs to the defendants.

It is so ordered.

**DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 5<sup>TH</sup> DAY OF DECEMBER 2023.**

**M.N. GICHERU**

**JUDGE**

