



**Mwaniki v Dida (Chairman) & 3 others (Sued as the Officials of Kibagare Slums Association)
(Environment & Land Case 91 of 2020) [2022] KEELC 15744 (KLR) (26 January 2022) (Ruling)**

Joseph Baker Kiamba Mwaniki v Abdi Godana Dida (Chairman) & 4 others [2022] eKLR

Neutral citation: [2022] KEELC 15744 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 91 OF 2020
LN MBUGUA, J
JANUARY 26, 2022**

BETWEEN

JOSEPH BAKER KIAMBA MWANIKI PLAINTIFF

AND

ABDI GODANA DIDA (CHAIRMAN) 1ST DEFENDANT

DAVID NYAGA (SECRETARY) 2ND DEFENDANT

SHAWN FRANCIS WAMBUA (YOUTH LEADER) 3RD DEFENDANT

SIMON MWAURA (MEMBER) 4TH DEFENDANT

SUED AS THE OFFICIALS OF KIBAGARE SLUMS ASSOCIATION

RULING

1. Coming up for determination is an application dated 29th September 2021 by the Defendants seeking the following orders:
 - i. Spent
 - ii. Pending the interpartes hearing of this application this Honourable Court be pleased to stay execution of judgment herein and any ensuing order/ decree.
 - iii. This Honourable Court be pleased to stay execution of the judgment herein any ensuing order/ decree pending the hearing and determination of the intended.. dated 16th September 2021 (sic).
 - iv. The costs of this application be provided for.



2. This application supported by the sworn affidavit of John Mwangi dated 29th September 2021 was premised on the grounds that the Applicants being dissatisfied by this Court's judgement delivered on 16th September 2021 had filed a Notice of Appeal and drafted a Memorandum of Appeal pending the supply of the Court record. They indicated that the said appeal has high chances of success and if the application is not granted, then the appeal would be rendered nugatory and they would suffer loss and damages if the judgment is executed. The applicants also added that they were ready and willing to abide by the conditions set by the court.
3. It should be noted that the said John Mwangi is not a party to the suit but avers that he is the Chairman of Kibagare Slums Association and has authority to swear the affidavit. However, no evidence of the said authority has been adduced.
4. The Respondent in the replying affidavit dated 4th November 2021 indicated that the application was fatally defective as the Supporting Affidavit had been sworn by a person who was not a party to the proceedings. He also noted that the application did not meet the threshold set under Order 42 Rule 6(2) of the *Civil Procedure Rules*, 2020 for grant of an application for stay pending appeal.
5. He also averred that the appeal did not have chances of success since he was the registered owner of the suit property; the applicants had not proved that they lived on his property for over seven decades; he had been in possession of the suit properties since 1977 till May 2020 when the Applicants invaded the land.
6. The application was to be canvassed by way of written submissions to be filed by the Applicants and respondent on 23rd November 2021 and 7th December 2021 respectively. However, there are no submissions on the CTS.

Analysis and Determination

7. Having analysed the application together with the affidavits, submissions, relevant legal framework and jurisprudence, this court finds that the issues for determination are whether:
 - i. The application is fatally defective since it was supported by an affidavit of a person who is not party to the proceedings
 - ii. The order of stay of execution should be granted.
8. It is quite apparent that the application is supported by the affidavit of John Mwangi who is allegedly the chairperson of Kibagare Slums Association. However, the person cited as the Chairman in the current suit is Abdi Godana Dida.
9. The court is alive to the fact that leadership positions in such associations and other groupings change from time to time. However, the applicants and the said Chairperson neither annexed evidence of his chairmanship nor authority from the members of the association to swear the affidavit on their behalf. I find that the said John Mwangi is a stranger to the suit and this court.
10. To this end, I make reference to the case of *Moiyo Mataiya Ole Keiwua v Chief Justice of Kenya & 6 others* (2008) JELR 98970 (CA) where the court held that:

“...While the Constitution and public policy demanded that a person should not be condemned unheard, there is another equally important issue of public policy that there be an orderly dispensation of justice. It is the duty of the Court to balance the conflicting issues. These affidavits were sworn by two people who were not parties to the proceedings in the superior court. Moreover, the two did not seek leave of the Court to be joined as parties and



they purported to swear... In our view ... would qualify as busy bodies who had no business in swearing and filing these affidavits... For those reasons we would order that the affidavits of the two ... be and are hereby expunged from the record” .

11. The courts thus expunges the supporting affidavit of John Mwangi, which means that the application is fatally defective and superfluous since it has no basis.
12. On the issue of stay of execution, I make reference to Order 42 Rule 6(1) of the [Civil Procedure Rules, 2010](#) which provides that;

“...the court appealed from may for sufficient cause order stay of execution of such decree or order ...”
13. Rule 6(2) goes on to provide grounds to consider in the grant of stay of execution.
14. The Court of Appeal in [Butt v Rent Restriction Tribunal](#) [1979] eKLR held that it is in the discretion of the court to grant or refuse a stay. This is a case where Judgment was delivered way back on 16.9.2021. The court granted a conditional stay on 30.9.2021 where the Applicants were required to deposit a sum of sh. 4,000,000 within 30 days. They did not comply. The court reviewed this order on 9.11.2021 requiring the Applicants to deposit sh 3,000,000 instead of the 4 million and again there appears to be no compliance. This is not a case where the Applicants are ready and willing to abide by the conditions set by the court. Thus even if the application had been anchored on a proper supporting affidavit, they would still have failed in meeting the criteria on matters stay of execution.
15. The upshot of this ruling is that the application dated September 29, 2021 is found to have no merits. The same is dismissed with costs to the Respondent/ Plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 26TH DAY OF JANUARY, 2022 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

C. Kamende for Plaintiff/Decree Holder

Court Assistant: Eddel Barasa

