



**Kabwoya v Karira & another (Environment and Land Case Civil Suit
210 of 2017) [2022] KEELC 3546 (KLR) (12 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3546 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE CIVIL SUIT 210 OF 2017**

EO OBAGA, J

MAY 12, 2022

BETWEEN

PETER LAVATSA KABWOYA PLAINTIFF

AND

NICHOLAS G. KARIRA 1ST DEFENDANT

JAPHET KIPYEGO CHEPKWONY 2ND DEFENDANT

RULING

1. This is a ruling in respect of two applications which seek stay of execution pending appeal. The first application is dated December 14, 2021 and is brought by the 2nd defendant. The second application is dated December 16, 2021 and it is brought by the 1st defendant.
2. The applicants in both applications contend that judgment was delivered against them on November 23, 2021 in which the plaintiff/respondent was awarded general damages of Kshs 500,000/= and order for eviction was granted if they did not move out of the property within 30 days.
3. The applicants therefore contend that if stay of execution is not granted, the appeal which they have preferred to the Court of Appeal will be rendered nugatory. They argue that they have arguable appeals and that if stay is not granted they will suffer substantial loss. The applicant in the second application also prays that there be an order of inhibition to protect the suit property from changing hands to third parties.
4. The respondent opposed the applicants' application arguing that the applicants had not met the threshold for grant of stay of execution pending appeal. The respondent argued that the Applicants were not in occupation of the suit property and that he has been kept out of his property which he purchased and that the intended appeal by the applicants does not contain arguable grounds. He states that he is entitled to fruits of his judgment.



5. In a further affidavit by the 1st defendant/applicant, he states that he has been in possession of the suit property and that is why he was ordered to vacate the same. He states that he is capable of meeting the decretal sum which the respondent is seeking.
6. I have carefully considered the applicants' applications as well as the opposition to the same by the respondent. I have also considered the submissions by the parties herein. The only issues for determination is whether the applicants have met the threshold for grant of stay of execution pending appeal and whether an order of inhibition should be granted.
7. Stay of execution pending appeal is governed by order 42 rule 6(2) of the Civil Procedure Rules which provides that no order of stay of execution shall be given unless the court is satisfied that substantial loss may result to the Applicant unless the order is made and that the application has been made without unreasonable delay and that such security as the court orders for the due performance of the decree as may ultimately be binding on him has been given by the Applicant.
8. The judgement herein was delivered on November 23, 2021. The two applications were filed on 14th and December 16, 2021 respectively. The applications were filed in less than a month. I therefore find that there was no unreasonable delay in filing the applications.
9. On whether the applicants will suffer substantial loss, it is important to note the nature of orders which were given in the judgment. It is the 1st defendant who is in possession of the suit property. It has put up a mud structure which he has permitted persons to reside on. The persons also act as security persons to the area residents. This is an arrangement between the village elder and the 1st defendant who is a lawyer by profession.
10. The 2nd defendant was brought to these proceedings by the 1st defendant who claimed adverse possession against him. He does not reside on the suit property. The general damages of Kshs 500,000/= was against the person who trespassed to the suit property. The 1st defendant in his further affidavit sworn on March 16, 2022 has deposed in paragraph 8 (c) that he is capable of meeting the decretal sum sought by the Respondent as he is a man of repute and good standing.
11. The respondent has been registered owner of the suit property since 2012 and has never expressed any intention of selling the suit property. It is therefore clear that the applicants have not demonstrated that they will suffer substantial loss as to call for grant of orders of stay of execution. The 2nd defendant is not facing eviction as he does not reside on the suit property. The general damages of 500,000/= were not aimed at him as he has not trespassed on the suit property. What substantial loss will he suffer as to call for stay of execution?
12. If the Respondent is to execute, he will only execute for costs and damages which the court granted. The 1st defendant has said he is capable of paying this sum. The respondent himself is a contractor who has said that he is capable of refunding the decretal sum in case the applicants succeed in their appeals. It is therefore clear that the applicants have failed to demonstrate what substantial loss they will suffer if stay is not granted. In case they succeed and the 1st defendant would have been evicted, the 1st defendant would simply move back and any amount in satisfaction of the decree would be refunded. The applicants having failed to demonstrate substantial loss which is the cornerstone for grant of stay of execution pending appeal, I find that the two applications are devoid of merit. There is also no need for grant of an order of inhibition. The two applications are dismissed with costs to the respondent.

It is so ordered.

DATE, SIGNED AND DELIVERED AT ELDORET ON THIS 12TH DAY OF MAY, 2022.



E. OBAGA

JUDGE

In the virtual presence of;

Mr. Kagunza for plaintiff

Mr. Mengich for 2nd defendant.

Court Assistant -Albert

E. OBAGA

JUDGE

12TH MAY, 2022

