



**Dignified Holdings Limited v Attorney General & 12 others (Environment & Land Case 310 of 2014) [2022] KEELC 3666 (KLR) (22 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3666 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT & LAND CASE 310 OF 2014**

**M SILA, J  
JUNE 22, 2022**

**BETWEEN**

**DIGNIFIED HOLDINGS LIMITED ..... PLAINTIFF**

**AND**

**ATTORNEY GENERAL & 12 OTHERS ..... DEFENDANT**

**RULING**

(Application for stay pending appeal; applicants having earlier filed an application for stay pending appeal which was dismissed; applicants proceeding to exercise their right to seek stay before the Court of Appeal which application is pending; applicants now filing another application for stay pending appeal before this court; application an abuse of the court process as there is another pending application before the Court of Appeal; application also declared res judicata as this court had already entertained an earlier application for stay pending appeal; application dismissed with costs)

1. The application before me is that dated January 10, 2022 filed by the 2<sup>nd</sup>, 4<sup>th</sup>, 5<sup>th</sup> and 6<sup>th</sup> defendants (respectively, Said Ndege, Omari Zonga, Said Kabangi, and Hilmi Ahmed, hereinafter, referred to as 'the applicants'). It is an application brought under Order 42 Rule 6 and Order 51 Rule 1 of the [Civil Procedure Rules](#). The applicants seek the following orders:-
  - a) Spent (certification of urgency).
  - b) Spent (interim orders pending hearing of the application)
  - c) That pending the hearing and determination of the Civil Appeal No. E085 of 2021, this Honorable Court be pleased to issue a stay of the intended cancellation of the Certificate of Lease issued to the applicants herein for the property known as Kwale/Diani Beach Block/151 pursuant to the Gazette Notice No. 14128 published on December 24, 2021 in the Vol. CCXXIII-No.262 of the Kenya Gazette; and



- d) That the cost of this application be provided for.
2. To put matters into context, the plaintiff filed this suit in the year 2014 against 13 defendants. The plaintiff's case was that she held title to the land parcel Kwale/Diani Beach Block/60. Another title to the same land was issued now bearing the title Kwale/Diani Beach Block/151. Two sets of titles were issued for Kwale/Diani Beach Block 151. The first to the applicants herein, and the second to the 7<sup>th</sup> to 13<sup>th</sup> defendants. In the suit, the plaintiff sought orders inter alia to declare illegal the titles Kwale/Diani Beach Block/151 issued to the applicants and to the 7<sup>th</sup> to 13<sup>th</sup> defendants. The evidence demonstrated that part of the land parcel Kwale/Diani Beach Block/60 was acquired for a road to pass through. The plot was subdivided into Kwale/Diani Beach Block/151 and Kwale/Diani Beach Block/152, the latter being the road reserve. After hearing the case judgment was delivered on May 12, 2020 in favour of the plaintiffs. The two sets of titles issued to the applicants and to the 7<sup>th</sup> – 13<sup>th</sup> defendants were cancelled.
  3. Aggrieved, the applicants filed a notice of appeal and subsequently, through an application dated May 20, 2020, they sought before this court an order of stay of the judgment pending hearing of the appeal. I heard that application and dismissed it through a ruling delivered on October 29, 2020. Part of the reason why I dismissed the application was that I was not persuaded that substantial loss had been demonstrated. The supporting affidavit to that application had been sworn by the applicants' counsel then on record, Mr. Magolo, and I wondered how counsel can allude to the loss that the applicants would suffer. I thought that this is an issue of fact and it was for the applicants to say what loss they would suffer which they had not.
  4. Matters lay quiet until this application was filed on January 19, 2022. It will be seen that it seeks stay of some Gazette Notices which were published with intention of cancelling the titles of the applicants, pending hearing of the appeal. The Gazette Notices are annexed to the supporting affidavit of Said H. Kabangi, the 4<sup>th</sup> defendant. He avers that their previous application was dismissed because the affidavit was sworn by counsel and therefore the application was not considered on merits. They then proceeded to file an application to the Court of Appeal for stay of execution which application he deposed was still pending as it was not certified urgent. He deposes that the threat of execution is now real as the Gazette Notices will cancel their title hence rendering nugatory their appeal. He contends that they stand to suffer substantial loss. He states that they are currently in occupation of the property and use it for farming and subsistence.
  5. The application is opposed by the plaintiff who filed Grounds of Opposition and a Replying Affidavit sworn by Sheba Mohamed, the company secretary of the plaintiff. He avers inter alia that upon dismissal of their earlier application for stay pending appeal on October 29, 2020, the applicants did nothing until July 2021 when they filed their application for stay at the Court of Appeal under Rule 5 (2) (b) of the [Court of Appeal Rules](#). He contends that they are indolent. He has further deposed that the process of rectification of title is not irreversible should the applicants succeed on appeal hence no evidence of substantial loss. He also complains of ongoing construction on the suit property despite the judgment. He also points out that no security has been offered.
  6. I directed that the application be heard by way of written submissions and I have taken note of the submissions filed by Mr. Omiti for the applicants and Mr. McCourt for the plaintiff.
  7. At the outset, I find this application to be an abuse of the court process. The applicants have a pending application before the Court of Appeal under Rule 5 (2) (b) of the [Court of Appeal Rules](#), that more or less seeks similar orders to what they want here. They cannot keep two applications seeking similar orders in two different courts for there is potential of bringing the administration of justice into embarrassment by issue of conflicting orders. Having two similar applications in two different



courts, seeking the same orders, is a classical abuse of the court process. The court cannot entertain an application that it considers to be an abuse of the court process. On that ground alone, this application is hereby dismissed.

8. Apart from that, the applicants had already brought before this court an earlier application for stay pending appeal which I dismissed. They cannot now purport to bring a second one. This application is res judicata for this court already pronounced itself on whether or not the applicants deserve stay pending appeal. The applicants cannot allege that the court did not consider the application on merits. It did, and it was not persuaded that the applicants have demonstrated any substantial loss. The applicants are not at liberty to file ad infinitum other applications for stay pending appeal. On the ground of res judicata, this application must also fail.
9. Given the above it is not within my mandate to proceed any further and consider the substance of the application.
10. The result is that this application is dismissed with costs.

**DATED AND DELIVERED THIS 22 DAY OF JUNE 2022.**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT MOMBASA**

