



REPUBLIC OF KENYA



**KENYA LAW**  
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**Barngetuny (Suing as The Administrator Of Estate Of The Late Gideon Gari Kibarono Alias Gari Kibarno) v Kirwa & another (Environment & Land Case 113 of 2021) [2022] KEELC 12832 (KLR) (29 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12832 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT KAPSABET**  
**ENVIRONMENT & LAND CASE 113 OF 2021**  
**MN MWANYALE, J**  
**SEPTEMBER 29, 2022**

**BETWEEN**

**NOAH KIPKOSGEY BARNGETUNY (SUING THE ADMINISTRATOR OF ESTATE OF THE LATE GIDEON GARI KIBARONO ALIAS GARI KIBARNO ..... PLAINTIFF**

**SUING AS THE ADMINISTRATOR OF ESTATE OF THE LATE GIDEON GARI KIBARONO ALIAS GARI KIBARNO**

**AND**

**STEPHEN KIPSS KIRWA ..... 1<sup>ST</sup> DEFENDANT**

**THOMAS KIMARU SAWE ..... 2<sup>ND</sup> DEFENDANT**

***(FORMERLY ELDORET E & L CASE NO 105 OF 2019)***

**RULING**

1. Before the court for determination is the notice of motion dated July 4, 2022 seeking stay of execution of the court orders issued in the judgement delivered by the court on May 31, 2022 pending hearing and determination of the appeal.
2. The application is premised on grounds interalia;
  - i. That the applicant will suffer substantial loss and total damage and
  - ii. That the decree may be executed at any time
  - iii. That if decree is executed the applicant will be rendered land less and he will be exposed to dangers in the street.
  - iv. That the judgment was extremely unfair to the applicant.



3. The application is supported by the supporting affidavit of the Thomas Kimaru Sawe who reiterates the grounds in support of the application.
4. The application is opposed by the replying affidavit of Noah Kipkosgei Bargentuny, who deposed that;
  - i. That there was no leave sought to
    - a. File appeal out of time
    - b. Deem the notice of appeal filed out of time as property on record
  - ii. No appeal is deemed to have been filed in light of the fact that notice of appeal having been filed out of time.
  - iii. That the respondent had already been issued with the title deed to the suit parcel of land and in line with the judgment of the court.
  - iv. That the court is functus officio parcel filed submissions in respect of the application as directed by court.
5. I have perused the application, the replying affidavit and the submissions on record.
6. The notice of appeal though dated June 7, 2022. An appeal against the judgment delivered on May 31, 2022, ought to have been filed within 14 days, hence the notice of appeal filed on July 6, 2022 was filed out of time without leave and enlargement of time.
7. The application is thus based on a defective notice of appeal and there being no appeal, the orders sought cannot be granted. No explanation by way of an affidavit was given for the delay in filing of the notice of appeal save that in their submissions the applicant submit having filed on time but were let down by the online filing.
8. The court is not convinced of this explanation coming from the bar through submissions and rejects the same. Thus application has no legs to stand on, noting the defect in the notice of appeal having been filed out of time, the application therefore fails, also on account that the orders sought to be stayed have already been executed as confirmed in the replying affidavit annexure NKB1.
9. The result is thus the orders sought cannot be issued as execution has already taken place.
10. The application dated July 4, 2022 is hereby dismissed with costs.

**DATED AT KAPSABET THIS 29<sup>TH</sup> SEPTEMBER, 2022.**

**HON. M. N. MWANYALE,**

**JUDGE**

**In the presence of;**

Ms Isiaho for Plaintiff/Respondent

Ms Olando holding brief for Mr. Ondieki for Defendant/Applicant.

