



**Chepsiror v Metto (Environment and Land Appeal E016 of 2022)
[2022] KEELC 12673 (KLR) (22 September 2022) (Ruling)**

Neutral citation: [2022] KEELC 12673 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E016 OF 2022
EO OBAGA, J
SEPTEMBER 22, 2022**

BETWEEN

WILFRED KIPKOSGEI CHEPSIROR APPLICANT

AND

JONA KIPRUGUT METTO RESPONDENT

RULING

Introduction and Background

1. The appellant filed a notice of motion dated June 2, 2022 in which he sought stay of execution of a decree dated May 11, 2022 directing the Respondent to pay the applicant a sum of Kshs 385,000/= being interest pending hearing and determination of the appeal filed herein.
2. The respondent had sued the appellant in the lower court through plaint filed in court on July 7, 2020 in which he sought an order of specific performance of agreement dated September 30, 2017 on account of breach of the agreement. In the alternative, the respondent sought refund of the consideration of Kshs 1,100,000/= hearing of the case started but before conclusion, the parties advocates entered into negotiations on settlement.
3. The parties counsel agreed on the decretal sum and costs which were settled. There was no settlement on interest. The parties agreed to put in written submissions on the issues of interest. In a ruling delivered on April 8, 2022, the trial magistrate ordered that the applicant was to pay interest on the principal amount at court rates from May 17, 2018 to April 20, 2021. The said sum was to attract further interest from April 8, 2022 until payment in full. This is what prompted the applicant to file an appeal on May 31, 2022 against the order on interest.



Applicant's Contention:

4. The applicant contends that he is aggrieved with grant of interest of Kshs 385,000/= to the respondent. The applicant argues that interest should have been ordered to run from March 1, 2022 when the consent judgement was entered and not from May 17, 2018 to April 20, 2021.
5. The applicant further argues that the appeal which he has preferred raises triable issues and that if there is no stay of execution, the appeal will be rendered nugatory.

Respondent's Contention:

6. The respondent contends that there is no competent appeal filed on the basis of which stay of execution can be granted. The respondent argues that the appeal relates to a decree issued on April 8, 2022 whereas the appeal was filed on May 31, 2022 which is beyond the statutory period of 30 days within which the appeal should have been filed.
7. The respondent further argues that there was no leave sought by the applicant to file the appeal out of time as required and as such the application as well as the appeal are incompetent and should be struck out.
8. In the alternative, the respondent contends that the applicant has not demonstrated that he will suffer substantial loss and that this being a money decree, the same will not be rendered nugatory as the applicant will always be refunded the decretal sum should he succeed in his appeal after execution will have been carried out.

Analysis and Determination:

9. The parties were directed to file written submissions. The applicant filed his submissions on July 5, 2022. The respondent also filed his submissions on July 5, 2022. I have carefully considered the applicant's application as well as the opposition to the same by the respondent. I have also considered the submissions filed by the parties. The only issue for determination is first whether the appeal herein is competent on the basis of which stay of execution can be granted and secondly, whether the applicant has demonstrated that stay of execution should be granted.
10. The appeal in this matter is against the ruling of the trial magistrate which was delivered on April 8, 2022. The present appeal was filed on March 31, 2022. Section 79 G of the *Civil Procedure Act* provides that all appeals from subordinate court shall be filed within 30 days of the decree or order appealed from. The same section provides that where the appeal is not filed within 30 days, the appeal may be admitted out of time if the appellant satisfies the court that he has a good and sufficient cause for not filing the appeal in time.
11. In the instant case, the applicant did not seek leave of court to file the appeal out of time. The applicant did not also seek certification from the lower court to show when he applied for the decree or order appealed against for this court to exclude the period between the date of request of the same and when it was issued as required under section 79 G of the *Civil Procedure Act*. This being the case, the appeal herein is incompetent and no stay of execution can be based on it. In this regard I agree with the decision of my brother Justice Eboso in the case of *Josephine Wambui Mwangi – Vs- Micahel Mukundi Ngugi* (2021) eKLR where he stated as follows:-

“No attempt was made to have the appeal admitted out of time. In the circumstances, the court cannot condemn the respondent to respond to an appeal that has been filed in blatant disregard of the law and no attempt has been made to regularize the defect. The net result



is that the court agrees with the respondent that this appeal stands to be struck out on the ground that it was filed more than one year outside the stipulated time and without an order enlarging time for bringing the appeal.”

12. Even if this court were to assume that the appeal was filed in time which is not the case, the applicant has not demonstrated that he will suffer substantial loss as to call for grant of stay of execution. This is a money decree which will not render the appeal nugatory. If the applicant was to pay the decretal sum, he will get the same refunded in case of success of his appeal. The applicant has not demonstrated that the respondent will not be in a position to refund the decretal sum if execution proceeds.

Disposition:

13. From the above analysis, it is clear that there is no competent appeal, the basis of which an order of stay of execution may be granted. The upshot of this is that the appeal as well as the notice of motion dated June 2, 2022 are hereby struck out with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 22ND DAY OF SEPTEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of parties who were aware of the date of delivery of ruling.

Court Assistant –Albert

E. O. OBAGA

JUDGE

