



**Jakoyo v Juma (Environment & Land Case 6 of 2022)
[2022] KEELC 14418 (KLR) (27 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 14418 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 6 OF 2022
A OMBWAYO, J
OCTOBER 27, 2022**

BETWEEN

ESTHER AKELO JAKOYO APPELLANT

AND

JOSEPH JUMA RESPONDENT

RULING

1. The appellant, Esther Akelo Jakoyo has come to court on appeal from the judgment of the learned magistrate the Hon Telewa S. N (SRM) sitting at Kisumu in CMCC number 141 of 2021 delivered on 26th January 2022 praying that the same be set aside.
2. The appeal is accompanied with an application dated 21st June 2022 for grant of an order of stay of execution of the judgment in Kisumu ELC No. 141 of 2021 and reinstate the appellant into occupation of all that parcel of lands known as LR /Kisumu/BAR/1667 pending the hearing and determination of the appeal.
3. The application is based on grounds that the appellant is the widow of the late Willis Jakoyo Bodo who died on the 1st of November 2001 leaving her behind the widow and children. The appellant's deceased husband is the proprietor of Kisumu/Bar/1667

The appellant states that her deceased husband is the registered owner of all the parcel of land known as Kisumu/Bar/1667. That on the 26th January 2022 the court pronounced itself disinheriting the applicant and her children. The appellant instructed her advocate to lodge an appeal and the same was filed being as Kisumu ELC Appeal No.6 of 2022. That the said appeal may take some time since ever the proceedings applied for on the 16th February 2022 have not been supplied to her advocate as per the information on 16th June 2022



The action of the respondent on the 10th June 2022 has greatly prejudiced the applicant and as a result she has been hospitalized and even signed the supporting affidavit from her hospital bed, she is traumatized, frail and sick as a result of the acts of the respondent herein.

4. The applicant submitted that she has an arguable appeal with a likelihood of success. She stated that she is the legal representative of the Estate of the deceased hence the beneficial owner of the parcel of land. The respondent is now demanding the parcel of land and intend to dispose to 3rd party. According to the appellant, if stay is not granted the appeal shall be rendered nugatory.
5. I have considered the application and the submissions on record. Order 42 rule 6 of the *Civil Procedure rules* provides
6. The judgment herein was entered on 26th January 2022. The application was filed on 22nd June 2022. The memorandum of appeal was filed on 16th February 2022.
7. The application was filed more than 4 months after the judgment. I do find four months inordinate delay.
8. On substantial loss, I do not find any evidence of substantial loss that the appellant is likely to suffer if stay is not granted. Moreover, the appellant has already been evicted. Last but not least the order sought can't be granted as there is nothing to stay.
9. The judgment was negative hence can't be stayed as no positive order was granted.
10. In the case of *Western College of Arts and Applied Sciences v EP Oranga & 3 others* [1976] eKLR where the Learned Judges stated thus:

“ what is there to be executed under the judgment, the subject of the intended appeal” The High Court has merely dismissed the suit, with costs. Any execution can only be in respect of costs. In *Wilson v Church* the High Court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay, it is so ordered.”
11. Similarly, in *Raymond M. Omboga v Austine Pyan Maranga* Kisii HCCA No 15 of 2010, Makhandia, J (as he then was) stated thus:

“The order dismissing the application is in the nature of a negative order and is incapable of execution save, perhaps, for costs and such order is incapable of stay. Where there is no positive order made in favour of the respondent which is capable of execution, there can be no stay of execution of such an order...The applicant seeks to appeal against the order dismissing his application. This is not an order capable of being stayed because there is nothing that the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory do not arise...”
12. The upshot of the above is that the prayer for stay of execution must fall by the wayside and the same is hereby dismissed with no orders as to costs.

DATED AND DELIVERED AT KISUMU THIS 27TH DAY OF OCTOBER 2022.

A. O. OMBWAYO



JUDGE

