



**General of the Salvation Army (Kenya Territory) v Allan George Njogu Residence Ltd & 4 others
(Environment & Land Case 227 of 2012) [2022] KEELC 15225 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 227 OF 2012
EO OBAGA, J
DECEMBER 8, 2022**

BETWEEN

GENERAL OF THE SALVATION ARMY (KENYA TERRITORY) PLAINTIFF

AND

**BOARD OF TRUSTEES, THE CHRCH COMMISSIONER FOR KENYA
(ACK) 1ST DEFENDANT
ALLAN GEORGE NJOGU RESIDENCE LTD 2ND DEFENDANT
COMMISSIONER FOR LANDS 3RD DEFENDANT
DISTRICT LAND REGISTRAR (UASIN GISHU) 4TH DEFENDANT
KENYA COMMERCIAL BANK LTD (KCB) 5TH DEFENDANT**

RULING

1. This is a ruling in respect of two separate applications both dated October 24, 2022. The two applications are brought by the 1st and 5th defendants/applicants which both seek stay of execution of judgment delivered on September 29, 2022 pending hearing and determination of an appeal which the applicants have filed in the Court of Appeal.
2. The applicants contend that if stay is not granted, the plaintiff/respondent will proceed to execute the decree from the impugned judgment which will render the appeal nugatory. The applicants further contend that their respective appeals raises weighty issues and that it is necessary to preserve the subject matter of the suit pending hearing and determination of the appeals which they have filed.
3. The applicants state that they are willing to offer security for the due performance of the decree as may be determined by the court.



4. The respondent opposed the applicants' applications based on grounds of opposition dated 14th and November 15, 2022 respectively and filed on November 18, 2022. The respondent contends that the applicants' applications do not meet the threshold set out under order 42 of the *Civil Procedure Rules* and that the applications are an abuse of the process of court.
5. I have carefully considered the applicants' applications as well as the opposition thereto by the respondent. I have also considered the submissions by counsel for the applicants during the hearing. The only issue for determination in these applications is whether the applicants have met the threshold set out under order 42 Rule (6) of the *Civil Procedure Rules*.
6. The conditions precedent for grant of stay under order 42 Rule (6) of the *Civil Procedure Rules* are firstly that the application has to be brought without unreasonable delay. Secondly, the Applicant has to demonstrate that he will suffer substantial loss should stay of execution not be granted. Thirdly, there should be security offered for the due performance on the decree as may ultimately be binding upon the applicant.
7. In the instant case, the impugned judgment was delivered on September 29, 2022. The present applications were filed on October 24, 2022. The application were therefore filed 25 days from the date of judgment. I therefore find that the applications were filed without unreasonable delay given the circumstances. Stay of execution had been granted for 30 days immediately after the judgement was delivered.
8. The important issue which remains for determination is whether the applicants have demonstrated that they will suffer substantial loss if stay of execution is not granted. In determining this issue, it is important to look at the judgment which was delivered and the circumstances surrounding this case.
9. The 1st applicant had been granted titles over properties which had been reserved for religious purposes. The 1st applicant offered two of the said properties as security for a loan which it took from the 5th defendant who is the 2nd applicant herein. The 1st defendant did not repay the loan which the 5th defendant wrote off. The suit properties are occupied by churches who have constructed on the same. This was the position obtaining when the charge was registered against the title.
10. There is no indication that the churches which are occupying the suit properties are intent on selling their properties. If execution is carried out by cancellation of titles held by the 1st applicant and the same are registered in the name of the respondent and the appeal filed succeeds, the entries in the register will be reversed. The execution will therefore not render the applicants' appeal nugatory as alleged.
11. The 2nd applicant that is the 5th defendant who have titles charged to them will equally not suffer any substantial loss even if execution is carried out. The position ante will be restored should the appeal succeed. Demonstration of substantial loss is the cornerstone for grant of stay. In the case of *Machira t/a Machira & Co Advocates v East African Standard* No 2 (2002) 2 KLR 63, substantial loss was defined in the following terms:-

“It is not enough merely to state that substantial loss will result, or that the appeal if successful will be rendered nugatory. That will not do. If the applicant cites, as a ground, substantial loss, the kind of loss likely to be sustained must be specified, details or particulars thereof must be given, and the conscience of the court looking at what will happen unless a suspension or stay is ordered, must be satisfied that such loss will really ensue and that if it comes to pass, the applicant is likely to suffer substantial injury by letting the other party



proceed further with what may still be remaining to be done or in execution of an award or decree or order, before disposal of the applicant's business (e.g appeal or intended appeal)"

12. As the applicants have not demonstrated any substantial loss which they will suffer if stay of execution is not granted, I find that their appeals to the Court of Appeal will not be rendered nugatory. The issue of security would have been considered if the applicants had demonstrated that they would suffer substantial loss. This being the case, I find that the two applications are devoid of merit. The two applications are hereby dismissed with costs to the respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 8TH DAY OF DECEMBER, 2022.

E. O. OBAGA

JUDGE

In the virtual presence of;

Ms. Odwa for 5th Defendant.

Ms. Kosgei for Mr. Omboto for Plaintiff.

Mr. Simiyu for 1st Defendant.

Court Assistant –Albert

E. O. OBAGA

JUDGE

8TH DECEMBER, 2022

