



REPUBLIC OF KENYA



**Sirgoi Tea Estate Limited v Cheriro (Environment & Land Case  
169 of 2013) [2022] KEELC 15248 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15248 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT & LAND CASE 169 OF 2013  
JM ONYANGO, J  
DECEMBER 8, 2022**

**BETWEEN**

**SIRGOI TEA ESTATE LIMITED ..... PLAINTIFF**

**AND**

**PAUL KIBII CHERIRO ..... DEFENDANT**

**RULING**

1. What is before me for determination is the defendant/applicant's application dated August 29, 2022 seeking a stay of execution of the judgment delivered on November 10, 2021 pending appeal.
2. The application is premised on the grounds that the applicant has filed a notice of appeal against the said judgment and that the he stands to suffer substantial loss if a stay is not granted.
3. The application is strenuously opposed by the respondent through the replying affidavit of Susan Koech who is a director of the defendant company. In the said affidavit, she depones that the application is premature, incompetent and an abuse of the court process for the following reasons.
4. Firstly, she points out that the notice of appeal filed by the applicant offends rule 77 of the *Court of Appeal Rules*. Secondly, the application has been filed 9 months after judgment was delivered and the delay is inexcusable.
5. Thirdly, the applicant contends that there is no evidence that the respondent intends to execute the judgment as it has not yet taxed its bill of costs .Lastly, it is the respondent's contention that the applicant's counterclaim having been dismissed for lack of *locus standi*, he has no valid claim against the respondent as he is illegally occupying the respondent's land.
6. The parties consented to have the application prosecuted by way of written submissions and both parties filed their respective submissions.



## Issues for Determination

7. The only issue for determination is whether the applicant is entitled to an order of stay pending appeal.

## Analysis and Determination

8. The law on stay pending appeal is governed by the provisions of order 42 rule 6 of the *Civil Procedure Rules* which provides as follows:
  - 6.(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
  - (2) No order for stay of execution shall be made under sub-rule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
  - (3) Notwithstanding anything contained in sub-rule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
  - (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that court notice of appeal has been given.
9. The principles that guide the courts in granting an order of stay pending appeal are now well settled.
  - “ 13. In the cases of *Kiplagat Kotut vs Rose Jebor Kipngok* [2015] eKLR, *Kenya Commercial Bank Limited vs Sun City Properties Limited & 5 others* [2012] eKLR and *Kenya Shell Limited vs Kibiru* (supra), the common thread was that a stay of execution will not be granted unless the conditions in order 42 rule 6 of the *Civil Procedure Rules* are satisfied.”
10. I will now proceed to determine whether the applicant has met all the conditions for stay pending appeal. On the issue of substantive loss, the applicant has in his supporting affidavit stated that he has been staying on the suit property with his family and he would suffer irreparable loss if they are evicted before the intended appeal is heard.
11. As correctly submitted by learned counsel for the respondent, there is no evidence that the applicant is faced with imminent eviction as the respondent has not taxed its bill of costs and therefore the fear of suffering substantial loss is not well founded.
12. Regarding the time within which the application was filed, I am constrained to agree with counsel for the respondent that the 9 months’ delay is inordinate. The explanation that the applicant requested his former advocate to apply for stay but he failed to do so is not convincing. If that was the case, why



did the applicant wait for 9 months to change advocates? I find the excuse unsatisfactory and hold that the delay is inordinate and inexcusable.

13. Lastly, even though the applicant has expressed his willingness to abide by the court's directions with regard to security for costs, this alone cannot entitle him to an order of stay as he has failed to meet the other 2 conditions laid down in order 42 rules 1 and 2 of the *Civil Procedure Rules*.
14. In view of the foregoing, the application lacks merit and it is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT ELDORET THIS 8<sup>TH</sup> DAY OF DECEMBER, 2022.**

**J.M ONYANGO**

**JUDGE**

