



**Kirobon Farmers v Nyarangi (Environment & Land Case 29 of 2017)  
[2022] KEELC 15240 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15240 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 29 OF 2017  
FM NJOROGE, J  
DECEMBER 7, 2022**

**BETWEEN**

**KIROBON FARMERS ..... PLAINTIFF**

**AND**

**SAMUEL O. NYARANGI ..... DEFENDANT**

**RULING**

1. This is a consolidated ruling on 2 applications, one dated October 3, 2022 (the first application) and the other October 12, 2022 (the second application).
2. The first application seeks orders of stay of execution of the judgment and decree in the instant suit pending its determination and that the court do reinstate the motion dated July 18, 2022 for hearing and determination on merit. The main prayer in that application therefore is the reinstatement of an earlier application which was dismissed on September 27, 2022 for non-attendance.
3. The ground given for non-attendance must therefore be scrutinised carefully. The first ground is that the applicants were within the court premises on September 27, 2022 and were waiting for their advocate to inform them on the proceedings. Since the matter was being handled through an application on the world wide web their advocate then informed them that he was having internet connectivity problems, and that when he finally accessed the virtual court session, the matter had already been called out and dismissed for non-attendance. They aver that they were depending on the dismissed application which would have enabled them to have their appeal heard on its merits. They also aver that failure to attend court was not deliberate, but was brought about by an honest mistake.
4. The application is supported by an affidavit of Samuel Kimutai Birir who is the chairman of the applicant and which reiterates the grounds at the foot of the application.
5. The defendant responded to the first application *vide* his replying affidavit sworn on October 12, 2022 in which he averred that the application was brought in bad faith, and is calculated to deny him the



fruits of his judgment in so far as it seeks a stay of execution. The defendant avers that the claims that the applicant's directors were in court or that there were connectivity problems that beleaguered its advocate on the day of hearing lack merit, and that the applicant was through its directors aware that the application was scheduled for hearing on September 27, 2022.

6. The other matters in the defendant's replying affidavit would be better reserved for another type of proceedings relating to non-compliance with court orders and I will not enumerate them here in the present application for reinstatement of a stay of execution application.
7. I have considered the application and the response in their entirety and I find that the application dated October 3, 2022 has merit and I therefore grant it in terms of prayer No 3 thereof. However, the plaintiff shall bear the costs of the that application.
8. In regard to the second application, it is noted that it is filed by the defendant and that it seeks orders that the OCS Kuresoi North Sirikwa Police Station to supervise compliance with the order issued on July 21, 2022, permanently injunctioning the plaintiff from any interference with the suit land. The defendant avers in his application that the plaintiff disregarded the court orders issued in the judgment and on July 8, 2022 it interfered with the defendant's management of the suit land, leaving him in possession of only a small portion thereof, and threatened to take away the defendant's livestock from the land.
9. I have considered the replying affidavit of the plaintiff sworn by the plaintiff's director/chairman one Samuel K Birir. The basis of the plaintiff's opposition to the application is that the defendant's claims of interference and harassment of his management of the suit land are false.
10. The plaintiff further avers that as at the inception of the proceedings herein, it had indicated that its members were on the suit land and so the defendant's claims of invasion were not true.
11. The rest of the matters that are raised in Mr Birir's affidavit are only fit for determination on appeal. What is of relevance now is that there is no existing stay of execution order that can save the plaintiff from execution of the judgment in the suit and therefore there is no basis upon which I can decline the application dated October 12, 2022. I therefore grant the application dated October 12, 2022 to the extent that the officer commanding Kuresoi North Sirikwa Police Station shall provide security during the execution of the judgment of this court issued on July 21, 2022 after all the other relevant processes have been observed.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 7<sup>TH</sup> DAY OF DECEMBER, 2022.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

