



**Kurere v Sawe (Environment and Land Appeal 11 of 2023)  
[2025] KEELC 1200 (KLR) (10 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1200 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KABARNET  
ENVIRONMENT AND LAND APPEAL 11 OF 2023**

**L WAITHAKA, J  
MARCH 10, 2025**

**BETWEEN**

**JOHN CHEPKOK KURERE ..... APPELLANT**

**AND**

**GLADYS JELEGAT SAWE ..... RESPONDENT**

**RULING**

1. By a ruling delivered on 13th June 2024 in respect of the appellant/applicant's application dated 13<sup>th</sup> February, 2023, this court started/held as follows: -
  22. ...As pointed out in the respondent's response, the respondent obtained title to the suit property in 2004. She has not enjoyed the suit property for over 20 years that this suit has been pending in court. The suit has on two occasions been determined in her favour.
  23. This court is called upon to balance the competing interests of the respondent as the successful litigant and the appellant who is exercising his right of appeal.
  24. In the circumstances of this case, where the subject matter of the suit is land currently registered in the name of the respondent but occupied by the appellant I am convinced that if stay is denied and the respondent takes over the suit property she may deal with it in a manner prejudicial to the outcome of the appeal, should the appellant succeed in his appeal.
  25. My considered view of this matter is that the prejudice to be suffered by the respondent can be addressed by fashioning appropriate reliefs to take into account the interests of the respondent as the registered proprietor of the suit property but without prejudicing the right of the appellant who is exercising is legally enshrined right of appeal to a higher court.



26. Doing the best I can in the circumstances of this case, I am inclined to allow the appellant/applicant's application for stay pending hearing and determination of his intended appeal to the Court of Appeal on the following conditions: -
- i. The appellant/applicant shall, within 21 days from the date of delivery of this ruling, deposit in a joint interest earning account to be opened in the joint names of the advocates for the parties Kshs.450,000/= being security for costs, of the proceedings before the lower court, the appeal before this Court and the appeal before the Court of Appeal;
  - ii. The appellant/applicant shall, within 21 days from the date of delivery of this ruling deposit in court, the original title to the suit property, which he has been holding after the same was handed over to him by the Respondent as security for performance of the Respondent's contractual obligation to him and which he failed to hand over to the Respondent after the Respondent fulfilled her contractual obligations to him;
  - iii. Additionally, the appellant/applicant shall, within 21 days from the date of delivery of this ruling, file an undertaking to pay to the respondent such mesne profits, as may be assessed by the trial court, based on the period of time he has been in use and occupation of the suit property contrary to the respondent's interest therein.
27. If the appellant/applicant does not comply with all the conditions herein given within the time given, the application for stay pending appeal shall stand automatically dismissed upon lapse of the time given."

2. Claiming/explaining that he is unable to comply with the order of the court requiring him to deposit the original title deed for the suit property in court for the reason that the title deed is not in his possession, the appellant/applicant, filed the notice of motion dated 1st July 2024 seeking the following orders: -
1. Spent.
  2. That pending the hearing and determination of the application, time within which to comply with the orders issued on 13.06.2024 to stop running;
  3. That the honourable court be pleased to vary/set aside the order requiring the Applicant to deposit to court as security the original title deed in respect of land parcel Kabonony/Moringwa/356;
  4. That upon determination of the application, the honourable court be pleased to extend time within which to comply with the orders issued on 13.06.2024 for a further three days;
  5. Any other relief suitable in the circumstances.
3. As can be gleaned from the grounds on the face of the application and the averments in the affidavits sworn in support of the application, supporting affidavit sworn on 1st July 2024 and supplementary affidavit sworn on 30th July 2024, the application is premised on the ground that the appellant/Applicant is unable to comply with the order. According to the appellant/applicant, despite the court



record showing that he is the one in possession of the original title deed, he is not the one in possession of the title deed, hence his inability to comply with the order of the court.

4. Explaining that in the event he fails to surrender the title, the respondent has the option of applying for another title deed, the appellant/applicant avers that failure to have the title deed does not disable the respondent from applying for a fresh title.
5. The respondent filed the replying affidavit he swore on 17th July, 2024. Through the affidavit, the respondent contends that the claim that the respondent is not in possession of the court is misleading in that: -
  - i. Annexure JC 2 referenced in paragraph 4 of his supporting affidavit, does not support his claim that he is not the one in possession of the original title deed for the suit property; and
  - ii. The applicant in his pleadings, particularly his amended statement of defence dated 22nd November 2018, paragraph 5A confirmed/pleaded that he was the one in possession of the original title deed for the suit property.
6. He also opposes the application on the ground that the time within which the appellant/applicant ought to have complied with the orders issued by the court has since lapsed.
7. The application was disposed off by way of written submissions.

#### **Appellant/Applicants submissions**

8. In his written submissions filed on 31st July 2024, the appellant/applicant urges the court to grant him the orders sought on the ground that he has through his sworn affidavits demonstrated that he is not the one in possession of the original title deed for the suit property.
9. Arguing that it is not clear where the title deed of the suit property is, the appellant/applicant urges the court to grant him the orders sought.
10. The respondent did not file submissions.

#### **Analysis and Determination**

11. As pointed out herein above, the appellant/applicant through the instant application, seeks to vary/set aside the order of this court that required him to deposit the original title deed for the suit property in court as additional security for compliance with such orders as may ultimately be binding on him. The reason for seeking that order is that he is not in possession of the suit property.
12. Through the averments in the affidavits he swore in support of the application, the applicant argues that despite the proceedings indicating that he is the one in possession of the suit property, there is a possibility that he is not the one in possession of the suit property. The applicant urges the court to believe his explanation/account despite having expressly stated/acknowledged in his pleadings; statement of defence and counterclaim dated 5th June 2014 and amended on 22nd November 2018 that he is the one in possession of the original title deed for the suit property.
13. Before this court made the order requiring the appellant/applicant to deposit the original title deed for the suit property, this court was on account of the evidence adduced before the lower and which evidence it reviewed, satisfied that it is the applicant who is in possession of the original title deed to the suit property.



14. The appellant/applicant has not explained existence of circumstances, other than the ones that existed at the time of filing his pleadings admitting or acknowledging that he was in possession of the original title deed as security for payment of the balance of the purchase price.
15. To argue that there is a possibility that he is not the one in possession of the original title deed which argument is a total departure from his pleadings and without any reasonable grounds warranting departure from his pleaded case, is to take the court for granted.
16. Whereas the court issued other orders that the applicant was also required to comply with, there is nothing capable of showing that the applicant complied with those orders within the time ordered by the court. No explanation either, has been offered for failure to comply with those other orders, within the timelines given by the court.
17. Clearly the conduct of the appellant/applicant paints him as a person who is not capable and/or willing to comply with any orders issued against him. As such, he is undeserving of any equitable reliefs from this court.
18. The applicant having failed to comply with the orders of the Court within the time given by the court, the application for stay stood dismissed as contemplated in the ruling of the court.
19. The respondent may proceed and execute the decree issued in his favour.
20. The upshot of the foregoing is that the application dated 1<sup>st</sup> July, 2024 is dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT KABARNET THIS 10<sup>TH</sup> DAY OF MARCH, 2025**

**L. N. WAITHAKA**

**JUDGE**

**Ruling delivered virtually in the absence of all parties;-**

N/A for the Applicant

N/A for the Respondent

Court Assistant: Christine

