



Truser & 10 others v Attorney General & 2 others (Environment and Land Appeal E018 of 2024) [2025] KEELC 1154 (KLR) (5 March 2025) (Ruling)

Neutral citation: [2025] KEELC 1154 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ITEN
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**L WAITHAKA, J
MARCH 5, 2025**

BETWEEN

WILSON KIPROP TRUSER & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS & 10 OTHERS APPLICANT

AND

**THE HONOURABLE ATTORNEY GENERAL 1ST RESPONDENT
LAND REGISTRAR, ELGEYO MARAKWET COUNTY 2ND RESPONDENT
THE COUNTY LAND ADJUDICATION OFFICER, ELGEYO MARAKWET
COUNTY 3RD RESPONDENT**

RULING

Introduction

1. By a judgment delivered on 25th November 2024 in Iten MCELC Case No. 25 of 2020, the trial magistrate Hon. V. Karanja PM, dismissed the applicants case/suit on the ground that the plaintiffs (now appellants/applicants) had failed to prove their case on a balance of probabilities to warrant the court grant them the orders sought.
2. The orders which the appellants/applicants sought were as follows: -
 - a. An order compelling the Land Registrar Elgeyo Marakwet County to issue them with title deeds for land parcels 51, 98, 99, 100, 101, 102, 103 and 272;
 - b. A permanent injunction restraining the 3rd defendant from undertaking any adjudication process with respect to land parcels 51, 98, 99, 100, 101, 102, 103 and 272;
 - c. Costs of the suit.



3. In dismissing the appellants/applicants' suit, the learned trial magistrate inter alia observed/stated: -

“It is clear that the suit parcels fall under Emsea/Chagach section and not lower Segu Section. The defendants have given a plausible explanation on why they were cancelled from the register that the surveyors included the suit parcels erroneously and they realized that during the inspection. Their explanation is believable. They followed the laid down procedure under the *Land Adjudication Act...*”

4. Aggrieved by the decision of the trial magistrate, the appellants/applicants appealed to this court. Besides appealing to this court, the appellants/applicants filed the notice of motion application dated 13th December, 2024 which is the subject matter of this ruling, seeking stay of execution of the decision of the lower court pending hearing and determination of the application and the appeal.
5. The application is premised on the grounds that the appellants/applicants have filed an appeal to this court which appeal is arguable and has high chances of succeeding; that unless the orders sought are granted, the respondents may execute the decree of the lower court thereby causing them substantial loss.
6. Despite having been served with the application, the respondents did not file a response. The application is, therefore, unopposed.
7. When the application came up for hearing, counsel for the appellants/applicants relied on the grounds on the face of the application and on the supporting affidavit of Johnson Ayabei, sworn on 13th December, 2024 in support of the application.

Analysis and determination

8. The application before me being one for stay of execution of the decision of the lower court pending hearing and determination of the appeal preferred to this court by the appellants/applicants, the burden is on the appellants/applicants to fulfil the conditions set out in Order 42 Rule 6(1) of the Civil Procedure Rules and restated in many decided cases on stay pending appeal. These are: -
 - a. Substantial loss may result to the applicants unless the order is made;
 - b. That the application has been made without unreasonable delay; and
 - c. The applicant has given such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
9. The sole issue arising from the application and the law applicable in respect thereof, is whether the applicants have made up a case for being granted an order of stay of the decision of the lower court pending appeal.
10. As pointed out herein above, the application is premised on the ground that the applicants have filed an appeal to this court which appeal is arguable and has high chances of succeeding and that unless the orders sought are granted, the respondents may execute the decree of the lower court thereby causing the appellants/applicants substantial loss.
11. In addressing the concern or apprehension of the applicants, I have perused the decision of the lower court and established that, other than the order for costs, the court did not issue any order requiring the applicants to do or refrain from doing anything. All what the court did was to refuse to grant the orders sought by the applicants for the reasons indicated in the court's judgment and reproduced herein above.



12. In the circumstances, I find and hold that the order given/issued by the trial court is negative in nature hence incapable of forming the basis of the order of stay of execution sought by the appellants/applicants. In that regard, see the case of *Chege v Gachora (Civil Appeal 265 of 2023)* (2024) KEHC 1994 (KLR) (29 February 2024) (Ruling) where it was stated/held: -

“I have further perused the court record and noted that the ruling dated 30th August 2023 in Thika CMCC No.718 of 2021 before the trial court dismissed the application dated 14th March 2023 that sought to set aside the orders issued on 5th April 2023. The order the applicant sought to set aside were for dismissal of his application for stay of execution for the reason that the applicant failed to serve the said application on the respondent despite the court ordering him to do so. In essence the impugned ruling is a negative order and is incapable of execution. This principle was enunciated in *Cooperative Bank of Kenya Limited v. Banking Insurance & Finance Union (Kenya)* (2015)e KLR where the court held as follows:-

An order for stay of execution (pending appeal) is ordinary an interim order which seeks to delay performance of positive obligations that are set out in a decree as a result of a judgment. The delay of performance presupposes the existence of a situation to stay-called positive order-either an order that has not been complied with or has partly been complied with.

13. Having determined that the order sought to be stayed is negative in nature hence incapable of forming the basis of granting the orders of stay sought by the appellants/applicants, I find the appellants/applicants’ notice of motion dated December 13, 2024 to be ill-advised and lacking in merits. Consequently, I dismiss it with no orders as to costs as it is undefended.
14. Orders accordingly.

DATED, SIGNED AND DELIVERED AT ITEN THIS 5TH DAY OF MARCH, 2025

L. N. WAITHAKA

JUDGE

Ruling delivered virtually in the presence of:-

Mr. Kigen for the Appellant

Mr. Kwame for the Respondents

Court Assistant: Christine

