



County Government of Migori v Tundu (Sued as Administrator of the Estate of Gideon Tundu) & another (Environment and Land Appeal E004 of 2024) [2024] KEELC 3593 (KLR) (2 May 2024) (Ruling)

Neutral citation: [2024] KEELC 3593 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MIGORI
ENVIRONMENT AND LAND APPEAL E004 OF 2024**

**M SILA, J
MAY 2, 2024**

BETWEEN

COUNTY GOVERNMENT OF MIGORI APPLICANT

AND

SIMEON ONGORO TUNDU (SUED AS ADMINISTRATOR OF THE ESTATE OF GIDEON TUNDU) 1ST RESPONDENT

THE LAND REGISTRAR, MIGORI COUNTY 2ND RESPONDENT

RULING

1. The appellant has filed an application dated 12 March 2024 seeking orders to restrain removal of a restriction registered in the land parcel Suna East/Wasweta I/321, and an order of stay of execution of the ruling of Hon. N. Wairimu, made in the case Migori CMC ELC Miscellaneous Application No. E019 of 2023, pending hearing and determination of her appeal. The application is opposed by the 1st respondent who filed a replying affidavit.
2. In the supporting affidavit, sworn by Gradus Oluoch Adis, the County Attorney of the applicant, it is averred that the restriction was registered on 7 August 2015 to protect the interests of the Government of Kenya and the public at large. He believes that the applicant and the public at large will suffer loss if the restriction is removed before the appeal is determined.
3. In the replying affidavit, the respondent avers that the application is intended to delay justice and that he has no plans to dispose of the suit property to any third party. He avers that the restriction is illegal.
4. I have considered the application. It is one for stay pending appeal. I am persuaded that it is necessary to retain the restriction pending hearing and determination of the appeal. It would appear that the applicant is asserting rights over the disputed land, and in order to maintain the land in the same state as it currently is, it is necessary that the restriction be maintained. If it is removed, there is risk of dealings



being entered which may defeat the appeal. I see no prejudice to the respondent because in his own deposition he avers that he does not intend to dispose of the suit property. If that is so, then he will not in any way be prejudiced by the maintenance of the restriction as a safeguard.

5. I will therefore allow the application. The restriction in the land parcel Suna East/Wasweta I/321 be maintained pending hearing and determination of this appeal. The status quo regarding possession and use of the said parcel of land also be maintained pending the hearing and determination of the appeal. The costs of the application will be costs in the cause.
6. Orders accordingly.

DATED AND DELIVERED THIS 2ND DAY OF MAY 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

MIGORI

Delivered in presence of:

Mr. Nyasimi for the applicant

Respondent in person

Court Assistant – David Ochieng'

