



**Ahmed v Tanui (Environment & Land Case 97 of 2021)
[2024] KEELC 5189 (KLR) (11 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5189 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAPSABET
ENVIRONMENT & LAND CASE 97 OF 2021
MN MWANYALE, J
JULY 11, 2024**

BETWEEN

ZARAH AHMED PLAINTIFF

AND

KIPRUTO TANUI DEFENDANT

RULING

1. Vide his application dated 27/5/2024 the Applicant Kipruto Tanui seeks primarily orders of stay of execution of the judgment and decree and all consequential orders pending hearing and determination of an intended appeal at the Court of Appeal.
2. The application is premised on grounds inter alia;
 - i. That the Defendant/Applicant is aggrieved with the judgment dated 14th February 2024 which was in favour of the Plaintiff/Respondent
 - ii. That the Defendant has an appeal with high chances of success and Applicant is ready and able to furnish security as this Court may direct.
 - iii. That the grant of the prayers would not prejudice the Plaintiff/Respondent as the same will be to maintain status quo that has been existing since 2001.
3. In opposition to the application the decree holder/Respondent filed a Replying Affidavit in which she deposes inter alia that the draft Notice of Appeal dated 27/2/2024 was not served upon her and thus failure to serve the said Notice of Appeal within the stipulated time frame is null and void and that there is thus no valid appeal pending before the Court of Appeal and the application is thus a non-starter and ought to be dismissed.



4. That the application is in contempt of the permanent injunctive orders issued in the judgment and waited for the lapse of the grace period to file the present application even after the Applicant was required to furnish the Respondent with completion documents in execution of the decree.
5. That the Applicant has a home in Nandi/Kamobo/6696 which was decreed to him and cannot state that he will be rendered homeless and that there is nothing permanent in nature erected on NANDI/KAMOBO/6696 decreed to the Respondent. On the strength of the above the Respondent sought for dismissal.
6. The application was argued orally with Mr. Buluma appearing for the judgment debtor/Applicant and Mr. Udoto appearing for the Decree Holder/Respondent.
7. It was the Applicant's submissions that the Court ought to exercise its discretion to allow the Applicant prosecute his appeal at the Court of Appeal, since the current status quo has been in existence from 2001, and a short time to prosecute the appeal would not prejudice the Respondent. In support of this limb of submissions, the Applicant placed reliance in the decisions of Mukuma vs Abwoga 1988 eKLR as well as in Misc. Civil Application No. 42/2011 Joseph Mukeya vs Agnes Chesoto and the Applicant urges the Court to allow the application.
8. In response, Mr. Udoto submitted and placed reliance on the Replying Affidavit and submitted that there was no valid appeal, before the Court of Appeal as the Notice of Appeal was not served upon the Respondents within the required period, and that no Memorandum of Appeal was filed and/or exhibited before Court.
9. He further submitted that the judgment had issued a permanent injunction against the Applicant and the Applicant was thus in contempt of Court.

Issues For Determination: -

10. Having analyzed the application, the affidavit in support, and in opposition of the application, the and oral submissions by Counsels, the Courts frames the issue for submission as follows;
 - i. Whether the application is merited
 - ii. What reliefs ought to issue?

Analysis And Determination: -

11. From the application, the execution process by issuance of the Notice under Section 159 of the *Land Act* has already commenced. The Respondents concede that there is no permanent structure on NANDI/KAMOBO/6696 save for only a pit latrine.
12. The Applicants on their part submit that they have had possession of the suit property since 2001, and that a stay of execution pending appeal will not prejudice the Respondents.
13. The issue of validity and/or otherwise of the Appeal preferred against the judgment of this Court, by reason of non-service within the time frames of the Notice of Appeal under the Court of Appeal Rules is not for the Trial Court but for the Appellate Court, as was held in the decision in the case of *Issa Shekuwe sualli vs Buscar Limited (2019)* eKLR.
14. The application for stay, has been brought when execution had already been commenced and there is a pending application for execution before the Deputy Registrar of this Court.



15. It was therefore not brought timely but there was a delay and, on that score, alone, the application does not succeed. The application similarly does not succeed on account of the reason that for orders of stay issue, it has to be determined whether there exists an appeal, and having found that the issue of the validity of otherwise of the Notice of Appeal can only be dealt with by the Court of Appeal, the order commending itself to the Court is for maintenance the current status quo or the ground and on the register for a period of 6 months, to allow filing of the intended Appeal and/or determination of validity of the Notice of Appeal whichever comes earlier.
16. Costs to the Respondent.

RULING DELIVERED AND DATED AT KAPSABET THIS 11TH DAY OF JULY 2024.

HON. M. N. MWANYALE,

JUDGE

In the presence of;

Ms. Shejero holkding brief for Mr. Beluma for the Defendant

Zahra Ahmed Plaintiff/Respondent in person.

