



REPUBLIC OF KENYA



**KENYA LAW**  
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**Oseko v Oseko & 2 others (Land Case Appeal E107 of 2024)  
[2024] KEELC 6559 (KLR) (7 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6559 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
LAND CASE APPEAL E107 OF 2024  
MD MWANGI, J  
OCTOBER 7, 2024**

**BETWEEN**

**JOSEPH NGALA OSEKO ..... APPELLANT**

**AND**

**DIANA KERUBO OSEKO ..... 1<sup>ST</sup> RESPONDENT**

**REGISTRAR OF TITLES ..... 2<sup>ND</sup> RESPONDENT**

**HON ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

*(In respect of the Notice of Motion application dated 7th August, 2024  
brought under the provisions of order 42 rule 6 of the Civil Procedure Rules)*

**RULING**

**Background.**

1. The application under consideration is by the Appellant in this matter. It seeks for an order of stay of proceedings in Milimani Chief Magistrate Court case ELC Case No. E379 of 2023 (Joseph Ngala Oseko – vs- Diana Kerubo Oseko & 2 others), pending the hearing and determination of this appeal. The Appellant argues that vide a ruling dated 17<sup>th</sup> July, 2024, Hon. Opande SA (P.M) ordered him to avail a total of 12 documents to the 1<sup>st</sup> Defendant in the case to demonstrate whether he was a man of means capable of purchasing the property, the subject matter of the suit before the trial court.
2. The Appellant has appealed against the said ruling vide the Memorandum of Appeal dated 1<sup>st</sup> August, 2024. The Appellant prays that the impugned ruling be set aside in its entirety. He asserts that the court erred in law and in fact by shifting the burden of proof from the 1<sup>st</sup> Respondent to himself by ordering him to avail his bank statements and M-pesa statements amongst other documents to show whether there was any transfer monies from the 1<sup>st</sup> Respondent to the himself.



3. The Appellant seeks to stay the proceedings before the trial court pending the consideration and determination of his appeal before this court. He posits that the appeal will be rendered nugatory and a mere academic exercise unless the order of stay is granted. He affirms that he has an arguable appeal with overwhelming chances of success.

#### **Response by the 1<sup>st</sup> Respondent.**

4. The Appellant's application is opposed by the 1<sup>st</sup> Respondent through her replying affidavit sworn on 12<sup>th</sup> September, 2024. The 1<sup>st</sup> Respondent asserts that her Advocate had served a request for delivery of particulars dated 5<sup>th</sup> December, 2023 upon the Appellant which were not delivered necessitating the filing of the chamber summons application dated 16<sup>th</sup> January, 2024. The impugned ruling was in respect to that application.
5. The 1<sup>st</sup> Respondent argues that the Appellant has not demonstrated that he has an arguable appeal and or that there is any prejudice he will suffer if an order of stay is not granted. He has therefore not met the threshold for the grant of the orders sought.
6. The 2<sup>nd</sup> and 3<sup>rd</sup> Respondents did not participate in the application.

#### **Court's Directions.**

7. The court heard the application through the oral submissions of the counsel representing the Appellant and the 1<sup>st</sup> Respondent, Mr. Mokuia & Mr. Nyangoro respectively. The proceedings of the day form part of the record of the court and I need not replicate them in this ruling. The advocates advanced their respective client's position in respect of the application for stay of proceedings.

#### **Issues for Determination**

8. Having considered the application by the Appellant, the grounds in support thereof, the response by the 1<sup>st</sup> Respondent and the oral submissions by the parties, this court is of the view that the sole issue for consideration is whether the Appellant's application meets the threshold for the grant of an order for stay of proceedings pending appeal.

#### **Determination**

9. In the case of Kenya Wildlife Services – vs- James Mutembei (2019) eKLR, the court cautioned that stay of proceedings should not be confused with stay of execution pending appeal. The court noted that;

“Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on the right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceedings is high and stringent.”

10. Ringera, J (as he then was) in the case of Re Global Tours & Travel Ltd HCWC No. 43 of 2000 (as cited in the case of Gichuhi Macharia & another vs Kiai Mbaki & 2 others (2016) eKLR), while considering an application for stay of proceedings aptly held that;

“As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice. The sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order



a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And, in considering these matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

11. Applying the test in the above cited case (Re-Global Tours & Travel Ltd (supra), I note that the Appellant expeditiously filed his application; within 14 days of delivery of the impugned ruling.
12. I too appreciate that he has already filed the record of appeal in a bid to ensure the expedient hearing and disposal of the appeal. The Appellant’s appeal, from a perusal of the grounds of appeal and the supporting affidavit in support of the application, I must say, raises arguable issues touching on the conduct of the case before the trial court by the presiding judicial officer.
13. I am therefore persuaded that the Appellant has met the threshold for the grant of an order of stay of proceedings pending appeal. The court in granting the stay order is conscious of its obligation to expedite hearing of cases viz a viz the overall obligation to do justice to all.
14. Consequently, I allow the Appellants application dated 7<sup>th</sup> August, 2024 and order a stay of the proceedings in Milimani Chief Magistrate Court case ELC Case No. E379 of 2023 (Joseph Ngala Oseko – vs- Diana Kerubo Oseko & 2 others, pending the hearing and determination of this appeal.
15. The costs of the application shall be in the cause.

It is so ordered.

**RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 7<sup>TH</sup> DAY OF OCTOBER, 2024.**

**M.D. MWANGI**

**JUDGE**

In the virtual presence of:

Mr. Mokuu for the Appellant/Applicant

Mr. Aencha h/b for Mr. Nyandoro for the 1<sup>st</sup> Respondent

N/A for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondents

Court Assistant: Yvette

**M.D. MWANGI**

**JUDGE**

