



REPUBLIC OF KENYA



KENYA LAW
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**Fedrini v Omar (Environment & Land Case 107 of 2009)
[2024] KEELC 7235 (KLR) (5 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 7235 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT & LAND CASE 107 OF 2009
EK MAKORI, J
NOVEMBER 5, 2024**

BETWEEN

FILIPPO FEDRINI PLAINTIFF

AND

IBRAHIM MOHAMED OMAR DEFENDANT

RULING

1. The application dated on 2nd September 2024 by the Applicant, which is accompanied by a certificate of urgency and supported by the affidavits of Ms. Priscah Obura, the counsel for the Applicant, and Applicant Ibrahim Mohammed Omar, both sworn on the same date, seeks a stay of execution and requests that the seizure of goods carried out in enforcing this Court's decree be stayed till the issues raised in the application are addressed. The execution is claimed to be premature, irregular, and unlawful, as three plots are intended to be sold to fulfil this Court's decree. Additionally, the Applicant is requesting the attendant costs to the application.
2. In response, Ms. Jackline Chepkwony, counsel for the Respondent, opposed the application in an affidavit dated 5th September 2024.
3. The Court directed that the motion be canvassed through written submissions. Parties complied.
4. Having meticulously reviewed the application, the supporting affidavits, the replying affidavit, and the parties' submissions, I frame the issues for this Court's decision as - whether to grant a stay of execution with the attendant costs.
5. The test for granting a stay of execution, as held in James Wangalwa & another v Agnes Naliaka Cheseto [2012] eKLR, is that the Applicant must demonstrate to the Court that a substantial loss will occur if a stay is not granted. The application must also be made without unreasonable delay, and the Applicant must provide security for the due performance of the decree. In that decision, Gikonyo J. held that these conditions are the essence of Order 42 Rule 6 CPR and that the conditions share an inextricable



bond such that the absence of one will affect the exercise of the discretion of the Court in granting a stay of execution and that the Court of Appeal in *Mukuma v Abuoga* [1988] KLR 645 reinforced this position.

6. The judgment dated 23rd October 2015 by this Court (Angote J.) dismissed the Plaintiff's suit and upheld the counterclaim by the Defendant in this manner: this manner:
 - a. Defendant is to sell Plot No. 2155, 2156, 2157, 2159, and 2160 Malindi and, upon the said sale, to pay Plaintiff the sum of 368,000/= Euros and the excess amount after the sale to be shared between Plaintiff and Defendant in ration 50:50.
 - b. The Plaintiff is to pay the cost of the Counterclaim.
7. The Applicant avers that three plots have not been sold since then, so execution cannot be issued. It has to await the sale, and after that, this Court will consider the sharing ratio by taking accounts. The Respondent avers the sale already happened, and there is some money the Applicant is deliberately not releasing to the Respondent to the tune of Kshs. 16,226,342.75/-
8. Since then, it seems that the parties have not been able to reach an arrangement on how to effect the decree herein and sell and share the three plots if correspondences by the advocates are anything to go by.
9. It was part of the judgment that the Plots be sold and parties share the proceeds at the ratio of 50:50.
10. It seems it cannot happen. Execution then has to take place because, as it appears, no such sale will happen shortly, and it will not be the Court's role to midwife the same, having rendered itself and a decree issued to that effect. There will be nothing then to stay. The conditions of stay have not been met. It would have required the wisdom of counsels for the parties to advise their client that much. Litigation must also come to an end.
11. The application dated 2nd September is hereby dismissed with costs. The dismissal is based on the Court's determination that the conditions for a stay of execution have not been met. Those are the orders of the Court.

DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY ON THIS 5TH DAY OF NOVEMBER 2024.

E. K. MAKORI

JUDGE

In the Presence of:

Ms. Kabole, for the Defendant

Happy: Court Assistant

In the Absence of:

Ms. Metto, for the Plaintiff

