



**Chepkonga v Kuikui & 3 others (Environment & Land Case
173 of 2016) [2023] KEELC 482 (KLR) (2 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 482 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 173 OF 2016
EO OBAGA, J
FEBRUARY 2, 2023**

BETWEEN

PETER CHEPKONGA PLAINTIFF

AND

HELENA TARGOK KUIKUI 1ST DEFENDANT

AMOS TUITOEK 2ND DEFENDANT

HENRY TUITOEK 3RD DEFENDANT

**HELENA TARGOK KUIKUI (SUING ON BEHALF OF THE ESTATE OF THE
LATE KUIKUI CHEPKONGA - DECEASED) 4TH DEFENDANT**

RULING

1. This is a ruling in respect of a notice of motion dated August 24, 2022 which the Plaintiff/applicant seeks the following orders:-
 1. Spent
 2. That pending the hearing and determination of this Application, this Honorable court be pleased to stay execution of the Judgment delivered on July 27, 2022, the Decree therefore in respect of the counterclaim and all other consequential orders arising from the said judgment including execution on costs.
 3. That in the alternative to (2) above, this Honorable court be pleased to issues an order of status quo in respect of the occupation and proprietorship of Baringo/kapropita/19.
 4. That pending the hearing and determination of the intended Appeal, this Honorable court be pleased to stay execution of the judgment delivered on July 27, 2022, the Decree therefrom



in respect of the counterclaim and all other consequential orders arising the said judgment including execution on costs.

5. That the costs of this application be awarded to the Applicant.
2. The Applicant contends that he has preferred an appeal from the judgment of this court delivered on July 27, 2022. He states that the process of executing the decree has commenced and if stay is not granted, the appeal which he has preferred to the Court of Appeal will be rendered nugatory.
3. The Defendants/Respondents opposed the Application through a replying affidavit sworn on October 18, 2022. The Respondents contend that execution of the decree has already been carried out and that there is nothing to stay. The Respondents further state that the Applicant lied on oath in his supplementary affidavit sworn on September 1, 2022 in which he claimed that surveyors did not visit the suit property on August 26, 2022.
4. The Respondents state that the Applicant will not suffer any substantial loss as the area which was demarcated for them used to be a grazing field and no structures will be demolished and the Applicant will not be moved from where he had been occupying.
5. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. The only issue for determination is whether the Applicant has met the threshold for grant of stay pending hearing and determination of the appeal filed.
6. To begin with, there can be no stay of execution where what is intended to be stayed has already happened. The county surveyor went to the ground and implemented the decree of the court on August 26, 2022. The Applicant only refused to sign the mutation forms. The Respondents have moved to court seeking appropriate orders.
7. In the case of *John Cheruiyot Mursoi v Augustine Murei & another* (2020) eKLR, the court held as follows:-

“As to whether there would be substantial loss if the orders sought were not granted, this court has already observed as above that the decree in this matter has already been executed, and the issue of whether or not substantial loss would occur if the orders sought are not issued does not arise”.

8. Even if execution would not have been carried out, the Applicant has not demonstrated that he will suffer substantial loss or that the appeal will be rendered nugatory. The Respondents were already occupying a portion of the suit property. The execution which has already been carried out did not affect his houses. Even if the Court of Appeal agreed with the Applicant, the least which can happen is that the status ante will be restored. I therefore find no merit in the Applicant's application which is dismissed with costs.

It is so ordered.

DATED, SIGNED and DELIVERED AT ELDORET ON THIS 2ND DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Kibet for Plaintiff/Applicant.

Mr. Sambu for Defendant/Respondent



Court Assistant –Laban

E. O. OBAGA

JUDGE

