Chweya v Maserea (Environment & Land Case 17 of 2022)
[2023] KEELC 18702 (KLR) (5 July 2023) (Ruling)

Neutral citation: [2023] KEELC 18702 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KAPSABET

ENVIRONMENT & LAND CASE 17 OF 2022

MN MWANYALE, J

JULY 5, 2023

(FORMERLY ELDORET ELC E001 OF 2021)

BETWEEN

MIKE CHWEYA ..... PLAINTIFF

AND

ESSAU CHWEYA MASEREA ..... DEFENDANT

(Application for stay of execution of the ruling dated May 18, 2023.)

RULING

1. Before Court for determination is the application dated June 6, 2023 seeking principally for stay of execution of the ruling dated May 18, 2023 pending hearing and determination of Eldoret Civil Appeal E34 of 2023.

2. The application before Court was not opposed, but the court has found it important to deliver this ruling in respect of the application.

3. In the ruling delivered on May 18, 2023, this Court upheld a Notice of Preliminary Objection and dismissed the Plaintiff's suit for being *res judicata*. At the delivery of the said Ruling, the Applicant sought for a stay of execution of the Ruling, which the Court declined on the basis that a dismissal being a negative order could not be stayed.

4. Undeterred the Applicant filed the present application subject of this ruling seeking stay of execution orders.

5. As stated above the Ruling sought to be stayed dismissed the Plaintiffs case for being *res judicata*. A dismissal of a suit, is by its very nature a negative order, where the Court has not ordered any of the parties to perform any task.

6. The Court of Appeal in the decision in *Gitundu vs Wathuku* (Civil Application E24 of 2021 quoted the decision in W*estern College of Arts and Applied Sciences vs E.P. Oranya & 3 others*.

7. In the *Gitundu* case, the Learned Judges stated

> "Additionally even if we had the requisite jurisdiction, this Court has said time without number that stay orders cannot issue in respect of negative orders, where the Court has not ordered any of the parties to perform any task."

8. Since the Plaintiff's suit was dismissed for being *res judicata*, there is nothing to stay and accordingly the application dated June 6, 2023 though unopposed, lacks merits and is dismissed.

DATED AND DELIVERED AT KAPSABET THIS 5TH DAY OF JULY, 2023.

HON. M. N MWANYALE,

JUDGE.

In the presence of;

Mr. Kogo holding brief for Mr. Kiprono for Applicants.

No appearance for Respondents.