



**China Communication Construction Company v Abdi & another (Environment and Land Appeal E008 of 2022) [2023] KEELC 18454 (KLR) (3 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18454 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL E008 OF 2022  
PM NJOROGE, J  
JULY 3, 2023**

**BETWEEN**  
**CHINA COMMUNICATION CONSTRUCTION COMPANY ..... APPELLANT**  
**AND**  
**HUSSEIN ABDI ..... 1<sup>ST</sup> RESPONDENT**  
**DAUD TANO ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This application is dated June 13, 2023 and seeks the following orders;
  1. That this application be certified urgent and be heard ex parte in the first instance.
  2. That this honourable court does order a reinstatement of its temporary stay of execution orders issued on May 15, 2023 pending the inter partes hearing of this application.
  3. That this honourable court be pleased to review, vary and/ or set aside the order made on June 5, 2023 dismissing the appellant's application dated May 4, 2023.
  4. That this honourable court be pleased to reinstate the application for hearing and determination on merit.
  5. That the court do make any further order and/ or directions as it may deem fit.
  6. That the costs of the application be in the cause.
2. The application is supported by the supporting affidavit of advocate Kibaara Murithi sworn on June 13, 2023 and has the following grounds;
  1. That on April 25, 2023 Honourable Chief Magistrate L Mutai delivered a ruling in Isiolo CMELC No E004 of 2023, Hussein Abdi & Anor v China Communication Construction



Company pursuant to which the learned magistrate fined Wang Lening, Huang Min, Michael Obop and all the Directors of the appellant jointly and severally in the sum of Kshs 600,000 in default of each to serve 6 months imprisonment.

2. That the appellant filed a notice of motion application dated May 4, 2023 seeking inter alia stay of execution orders against the aforementioned ruling.
  3. That on May 15, 2023 this honourable court issued temporary stay of execution orders on condition that the appellants deposit a security of Kshs 900,000 with the court within 14 days and fixed the matter for mention on June 6, 2023.
  4. That the appellant sought to comply with the said order but faced difficulty in depositing the sum in the judiciary's account eventually failing to do so due to no fault of their own.
  5. That the matter was mentioned on June 5, 2023 in the appellant's absence where this honourable court dismissed the appellant's application.
  6. That the matter's mention date was changed from June 6, 2023 to June 5, 2023 without notice to the appellant.
  7. That following the discharge of the temporary stay of execution orders, Wang Lening, Huang Min and Michael Obop and the appellant's directors are apprehensive that they may be committed to prison and the appellant's construction activities on the Garrissa – Isiolo (A10) highway may be disrupted.
  8. That unless the said application is reinstated, the appellant will be driven away from the seat of justice unheard.
  9. That no prejudice shall be occasioned upon the respondents if the orders sought herein are granted.
  10. That it is in the interest of justice, that the said orders be set aside and the application be reinstated for hearing and determination on merit.
3. When the application came up for interparties hearing on July 3, 2023, it was agreed by the parties that in view of the fact that the Judiciary payments system had issues, the application ought to be allowed.
  4. In the circumstances, the application is allowed.
  5. Conditional stay of execution of the order issued in Isiolo CMCC E004 of 2023 on April 25, 2023 is granted provided that the applicant deposits with court the sum of Kshs 900,000/= as deposit for security within 14 days of today failing which the stay granted herein shall automatically lapse.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 3<sup>RD</sup> DAY OF JULY, 2023 IN THE PRESENCE OF;**

Court Assistant: Balozi/Rahma

Kibaara for the Applicant

Abdillahi for the Respondents

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

