



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Boru v Adan (Environment and Land Appeal 002 of 2023)
[2023] KEELC 21886 (KLR) (13 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21886 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL 002 OF 2023
PM NJOROGE, J
NOVEMBER 13, 2023**

BETWEEN

BONAYA BORU APPLICANT

AND

HASSAN ISSACK ADAN RESPONDENT

RULING

1. This applications is dated 21/2/2023 and seeks orders;
 1. This application be certified urgent and the same be heard on priority basis.
 2. That the Honourable Court be pleased to order stay of execution of the judgment and decree of the Honourable Chief Magistrate L. Mutai delivered on 31st January, 2023 pending hearing and determination of this application.
 3. That the Honourable Court be pleased to order stay of execution of the judgment and Decree of the Honourable Chief Magistrate L. Mutai delivered on 31st January 2023 pending hearing and determination of the Appeal before this court.
 4. That this Honourable Court be pleased to issue a Temporary Injunction restraining the Respondent, his Agents, employees, advocates, auctioneers or any person acting, on his behalf from interfering, intimidating, harassing, evicting and/or in any other manner interfering with the property known as Plot no 859 Kambi Garba East pending hearing and determination of this application.
 5. That this Honourable Court be pleased to issue a Temporary Injunction restraining the Respondent, his agents, employees, advocates, auctioneers or any person acting on his behalf from interfering, intimidating, harassing, evicting and/or in any other manner interfering with



the property known as Plot no 859 Kambi Garba East pending hearing and determination of the Appeal.

6. Any other relief that the Honourable Courts deems fit to grant.
7. The costs of this application be provided for.
2. The application is supported by the affidavit of Bonya Boru, the applicant, and has nine grounds.
3. The application was canvassed by way of written submissions.
4. The application refers to an attached Memorandum of Appeal which the applicants advocate claims that it evinces enough grounds for the Appeal to eventually succeed. The applicant's advocate says that the applicant is ready to deposit requisite security if he is called upon to do so.
5. The respondent opposes the application and says that the applicant will not suffer harm if the orders sought are not granted as the applicant can be adequately compensated in monetary terms should his intended appeal eventually succeed.
6. The respondent urges the court to dismiss the application for being materially, fatally and incurably defective for having been filed by an advocates who is improperly on record and for having ignored the requirements of Order 9 Rule 9 of the *Civil Procedure Rules*.
7. Regarding the prayer for injunction the respondent argues that the applicant has not satisfied the principles enunciated by the Classic Case of *Giella v Cassman Brown* [1975] EA 358 regarding a *prima facie* Case, Irreparable injury and balance of convenience.
8. I have carefully considered the pleadings, the authorities and submissions proffered by the parties to buttress their positions. I do note that the applicant has filed a Memorandum of Appeal. If or if not the appeal has a high or low chances of success can only be determined by the appellate court. Regarding the requirements of Order 9 Rule 9 of the *Civil Procedure Rules*, the applicant's advocate has not denied that he did not abide by the said requirements when he came on record for the applicant. I do, however, note that he has filed a Notice of Appointment. In the greater interest of justice, I find, though reluctantly, that this indiscretion can be deemed a technicality which can be corrected through proper regularization by the concerned advocate.
9. I do find that the grounds proffered by the applicant can be canvassed at an appellate level.

I issue the following orders;

- i. Conditional stay of Execution is granted provided that the applicant deposits with court as security the sum of ksh 500,000/= within 21 days of today failing which this conditional stay will automatically lapse.
- ii. Prayer 5 is granted pending hearing and determination of the Appeal.
- iii. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 13TH DAY OF NOVEMBER, 2023 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Caleb Mwiti for the Applicant.

Charles Muchiri holding brief for Kitheka for the Respondent.

HON. JUSTICE P.M NJOROGE



JUDGE

