



Kega & another v Blue Nile (East Africa) Limited (Environment and Land Appeal E032 of 2022) [2023] KEELC 21193 (KLR) (2 November 2023) (Ruling)

Neutral citation: [2023] KEELC 21193 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E032 OF 2022
JO OLOLA, J
NOVEMBER 2, 2023**

BETWEEN

PETER NDUNGU KEGA 1ST APPELLANT

ISAAC KING'ORI KEGA 2ND APPELLANT

AND

BLUE NILE (EAST AFRICA) LIMITED RESPONDENT

RULING

1. By the Notice of Motion dated 19th December, 2022 Peter Ndungu Kega and Isaac King'ori Kega (the Appellants) pray for an order of stay of execution of the Ruling and orders made on 23rd November, 2022 pending the hearing and determination of their Appeal.
2. The application which is supported by an Affidavit sworn by the 1st Appellant is based on the grounds that:
 - (a) The Appellants being aggrieved by the said Ruling/orders have sought for certified copies of the proceedings and the Ruling;
 - (b) There is a likelihood of rendering the Appeal nugatory unless the orders of stay are granted; and
 - (c) There is no prejudice likely to be occasioned by the orders sought.
2. Blue Nile (East Africa) Limited (the Respondent) is opposed to the application. In a Replying Affidavit sworn by its director Lydia Gode Chute and filed herein on 20th March 2023, the Respondent states that the Court may proceed to allow the stay pending appeal but subject to the Appellants being required to deposit security for costs that were awarded at the trial Court.



3. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the Parties herein.
4. By their application before the Court, the two Appellants pray for an order staying execution of the Ruling made by the trial Court on 23rd November, 2022. That Ruling arose out of an Originating Summons dated 19th May, 2021 filed by the Respondent herein in which it sought the determination of several issues in relation to the parcels of land known as Mahiga/Kamoko/178 and Mahiga/Munyange/1005, which had been used to guarantee some goods procured on credit from the Respondent.
5. It is the Appellant's case that they reside in the said properties together with their families and that if the orders issued by the trial Court are executed, they stand to suffer irreparable loss and damage and that such execution would render the Appeal nugatory.
6. I did not understand the Respondent to be opposed to the grant of the orders of stay of execution. On the contrary, the Respondent was agreed to the said orders being granted but on condition that the Appellants are required to deposit security for costs.
7. As it were, the principles guiding the grant of an order of stay of execution pending appeal are provided for under Order 42 Rule 6(2) of the Civil Procedure Rules as follows:

“No order for stay of execution shall be made under Sub-rule (1) unless –

- (a) the Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
8. From a perusal of their submissions herein, the Appellants are equally not opposed to the Court issuing an order of security for the due performance of the decree. From the material placed before this Court, the Respondent was granted costs of the Originating Summons. Those costs were subsequently assessed at Kshs.365,044.96/-.
 9. In the premises, I hereby grant an order of stay of execution of the orders issued on 23rd November, 2022 on condition that the Appellants do deposit the sum of Kshs.365.044.96/- in a joint interest earning account in the names of the Learned Advocates representing the Parties herein within 30 days from today.
 10. In default the Motion dated 19th December, 2022 shall stand dismissed with costs.
 11. The costs of this application shall otherwise be in the Appeal.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 2ND DAY OF NOVEMBER, 2023.**

In the presence of:

Mr. Nderi for the Appellant/Applicant

No appearance for the Respondents

Court assistant – Kendi



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J. O. OLOLA
JUDGE

