



REPUBLIC OF KENYA



**Nairowua v Katato & another (Environment & Land Case  
8 of 2017) [2022] KEELC 3555 (KLR) (5 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3555 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 8 OF 2017  
MN GICHERU, J  
MAY 5, 2022  
(FORMELY MILIMANI ELC CASE NO.63/2017)**

**BETWEEN**

**JEREMIAH MEPUKORI NAIROWUA ..... PLAINTIFF**

**AND**

**TUMBES OLE ROIKA KATATO ..... 1<sup>ST</sup> DEFENDANT**

**SAMBERU PARNGATIAN SABURU ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. This ruling is on the Notice of Motion dated 6<sup>th</sup> December, 2021. The said motion which is by Tumbes Ole Roika Katato, the Applicant, seeks two main orders namely;
  - i. Extension of time within which the Applicant can lodge a Notice of Appeal against the judgement and decree of this Court delivered on 18<sup>th</sup> November, 2021.
  - ii. A stay of execution of the judgement dated 18<sup>th</sup> November, 2021 and the ensuing decree pending the hearing and determination of the intended appeal.
2. The motion which is brought under Sections 3A and 79 G of the *Civil Procedure Act*, Orders 42 Rule 6 and 50 Rule 6 of the *Civil Procedure Rules* 2010, Rule 7 of *Appellate Jurisdiction Act* and all enabling provision of the law is supported by 14 grounds, and an 18 paragraph affidavit sworn by the Applicant and 3 annexures.
3. The gist of the Applicant's motion is that the intended appeal will be rendered nugatory if the two orders are not issued yet he was never heard, never sold the suit land, never received any payment from the Respondent who has admitted as much in his pleadings and he stands to lose land measuring 40 acres.



4. The Notice of Motion is opposed by the Respondent, Jeremiah Mepukori Nairova, whose counsel has filed four (4) grounds of opposition namely;
  - i. That this Court lacks jurisdiction to extend time within which to lodge an appeal in the Court of Appeal.
  - ii. That in the absence of an appeal an order for stay of execution lacks basis and purpose.
  - iii. The loss if any, is measurable and not substantial.
  - iv. That this Court being functus officio cannot hear or determine issues as to the arguability of the non-existent appeal.
5. Counsel for the parties filed written submissions on 1<sup>st</sup> April, 2022 in the case of the Applicant and 7<sup>th</sup> April in the case of the Respondent.

The Applicant's Counsel identified three (3) issues for determination namely;

  - a. Whether the Court has jurisdiction to extend time within which to lodge the notice of appeal.
  - b. Whether the Court should grant stay of execution.
  - c. Security for due performance of the decree.
6. Counsel urged that Section 7 of *Appellate Jurisdiction Act* empowers this Court to extend the time for giving of notice of intention to appeal from a judgement of this Court. He adds that in the case *Butt -vs- Rent Restriction Tribunal* (1972) KLR 417, the Court allowed a stay of execution in a case such as this.

Finally, counsel said that since the Applicant is ready to provide security for the due performance of the decree this application has merit and should be allowed.
7. On the other hand, the Respondent's Counsel while agreeing that this Court may extend the time for giving the notice of intention to appeal out of time, it has no power to extend time for lodging the appeal of time. It would therefore be futile to extend time to lodge the notice of appeal in the absence of an application for extension of time to lodge the record of appeal out of time.

Counsel relied on three decisions, two from the Court of Appeal and one from the Supreme Court. The one from the Supreme Court is *Bookpoint Limited -vs- Guardian Bank Limited and another* 2021 eKLR.
8. As for stay of execution, the Respondent's Counsel urged that in the absence of a Notice of Appeal, a stay of execution ought not to be granted as there is no appeal.

On substantial loss, counsel urges that none has been proved because the land is physical and its register is in existence so it is not right to say that the property will no longer be available.

Finally, the Respondents' counsel urges that the Applicant is guilty of unreasonable delay in prosecuting the case and also filing the current application and is therefore not deserving of the Court's discretion.
9. I have carefully considered the application in its entirety including the grounds in support, the supporting affidavit, the grounds of opposition and the submissions by learned Counsel for the parties. I make the following findings;



On the first issue of extending time within which the Applicant may file an appeal against the judgement of 18<sup>th</sup> November, 2021, I find that no good grounds exist for the issuance of such an order in the absence of an application for extension of time to lodge the record of appeal.

I am persuaded by the Respondent's Counsel that both the Court of Appeal and the Supreme Court have settled the law in this point.

10. Secondly, I am persuaded that in the absence of an appeal, an order for stay of execution is not deserved because there is no guarantee that there will ever be an appeal and an order for stay of execution must be anchored on an existing suit.

Finally, I am not satisfied that substantial loss will be suffered by the Applicant because the suit land is immovable property.

For the above stated reasons, the notice of motion dated 6<sup>th</sup> December, 2021 is dismissed with costs.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 5TH DAY OF MAY, 2022.**

**M.N. GICHERU**

**JUDGE**

