



**Jung'a v Republic (Criminal Appeal 26 'A' of 2023)
[2023] KEHC 21440 (KLR) (20 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 21440 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT MIGORI
CRIMINAL APPEAL 26 'A' OF 2023
RPV WENDOH, J
JULY 20, 2023**

BETWEEN

WENJE AWINO JUNG'A APPELLANT

AND

REPUBLIC RESPONDENT

RULING

1. By the application dated 16/5/2023, the applicant, Wenje Awino Jung'a seeks an order that the court do suspend the execution of the Order of the trial court dated 11/5/2023 compelling the applicant to demolish his home first before sentence on 18/5/2023, pending hearing and determination of his appeal.
2. The grounds upon which the application is premised are that the appellant has appealed against the judgment of the court whereby he was convicted on the charge of forcible detainer contrary section 92 of the *Penal Code*; that the court ordered the appellant to demolish his home before returning to court for sentencing on 18/5/2023. It is the applicant's contention that the order directing him to demolish his house before sentence is made in error and in violation of his right of appeal and in violation of the mandatory provisions of section 152 E-(1) of the *Land Act* which requires notice of a minimum of three months before eviction in any case; that the order is made without jurisdiction and is illegal and mischievous.
3. The application is also supported by the affidavit of the applicant where he adds that if he goes ahead to demolish his house, then there will be no need to proceed with the appeal.
4. The Respondent conceded the appeal.
5. The applicant was convicted on a charge of forcible detainer contrary to section 92 of the *Penal Code*. The court found that the applicant was claiming to be occupying Plot No. 704 but did not produce any document to show the existence of the said plot. The court then went ahead to order that the



applicant vacate the land in question in one week and remove all structures. The court had noted that the applicant had lived on the said land for over 20 years meaning that that was his home. If the applicant went ahead to demolish the structures, it means that the substratum of the appeal will have been removed and therefore the appeal, if it proceeds will be rendered nugatory and will serve no purpose.

6. In essence, the said order of the court would have denied the applicant his right of appeal. I have also looked at the provisions of section 152E of the *land Act* and I find that the applicant is deserving of the order prayed for. I hereby grant prayers 2 and 3 of the Notice of Motion pending hearing of the appeal.
7. The Record of Appeal be filed / served within sixty (60) days hereof. Mention before Deputy Registrar on 20/9/2023.

DELIVERED, DATED AND SIGNED AT MIGORI THIS 20TH DAY OF JULY, 2023.

R. WENDOH

JUDGE

In presence of; -

Mr. Kaino Prosecution Counsel

Appellant Absent

Mr. Kisera for Applicant

