



**Kingori v Chomba & another (Civil Appeal 105 of 2022)
[2023] KEHC 20154 (KLR) (13 July 2023) (Ruling)**

Neutral citation: [2023] KEHC 20154 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NAKURU
CIVIL APPEAL 105 OF 2022
HK CHEMITEI, J
JULY 13, 2023**

BETWEEN

PAUL NELSON NGATIA KINGORI APPLICANT

AND

WANGOMBE CHOMBA 1ST RESPONDENT

JOHN NGUNJIRI T/A TANGO AUCTIONEERS 2ND RESPONDENT

RULING

1. In his application dated 22nd November 2022 the Applicant seeks the following orders;
 - (a) That the Court be pleased to stay execution of the entire judgement by honourable E G Nderitu (CM) as delivered on the 12th July 2022 in Molo CMCC 210 of 2019 pending the hearing and determination of the appeal by the applicant herein.
 - (b) Costs be provided for
2. The application is supported by the applicant's affidavit sworn on the same date and the grounds on the face thereof.
3. The applicant in essence was directed through the judgement of the trial court to compensate the respondent for the demolition they did on the latter's property valued and entered judgement against him for the sum of Kshs 1,639,500. The applicant being aggrieved has filed this appeal citing several grounds.
4. The respondent through the replying affidavit sworn on 9th December 2022 has opposed the same on the grounds that the applicant was simply delaying the enjoyment of the fruits of the judgement and that he had no arguable appeal. He prayed that the application be dismissed.



5. The court directed the parties to file written submissions which they have complied and they are all in agreement that Order 42 rule 6(1) of the *Civil Procedure Rules* apply in all fours.
6. The applicant prayed that the said application be allowed and he has provided his parcel of land namely Elburgon/Elburgon Block 3/16 as a security pending the hearing of the appeal.
7. The respondent on his part has submitted that the applicant should be ordered to pay all the amount in full as he was pecunias enough to refund the amount should the appeal succeed.
8. The court is mandated under Order 42 rule 6 (1) above of the *Civil Procedure rules* to grant the application if substantial loss will be suffered by the applicant unless the order is granted, it has been made without undue delay, and provisions of such security pending appeal.
9. The application undoubtedly has been brought without much delay. The only critical issue is whether the applicant shall suffer any prejudice and loss should the same not be granted and whether the appeal shall be rendered nugatory. It is not for this court at this juncture to delve into the merits or otherwise of the appeal as that shall be considered at the appropriate time.
10. I do not think considering the history of the matter at hand that the respondent is too impecunious to be unable to pay the applicant. It is evident on the face of it that what the applicants demolished was a wrong property meaning that even if they succeed in the appeal the impugned property shall still be available for disposal and recovery of the decretal sum.
11. It was in any case the duty of the applicant to prove that the respondent will be unable to repay the decretal sum in the event he succeeds in the appeal.
12. Taking the totality of the matters herein I do not find merit in the application and the same is hereby dismissed. The costs shall await the outcome of the appeal.

DATED SIGNED AND DELIVERED AT NAKURU VIA VIDEO LINK THIS 13TH DAY OF JULY 2023.

H K CHEMITEI
JUDGE

