



Mutua v Shariff & another (Being Sued as the Legal Representative of the Estate of Abdulla Shariff Omar Mohamed) (Environment and Land Appeal E007 of 2024) [2025] KEELC 272 (KLR) (Environment and Land) (31 January 2025) (Ruling)

Neutral citation: [2025] KEELC 272 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E007 OF 2024
EK WABWOTO, J
JANUARY 31, 2025**

BETWEEN

PENINAH KIMERU MUTUA APPELLANT

AND

MAHER ABDULLA SHARIFF 1ST RESPONDENT

SIMON KATUA MUTIA 2ND RESPONDENT

**BEING SUED AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF
ABDULLA SHARIFF OMAR MOHAMED**

RULING

1. Order 42 Rule 6 Sub-Rule 1 of the Civil Procedure Rules. The provisions under reference state as hereunder:

“No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on the application being made, to consider such application and to make such order thereon as may to it seems just, and any person aggrieved by order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside”.

2. The court has considered the application as well as the Replying Affidavit sworn on 13th December 2024 by the 1st Respondent and the Replying Affidavit sworn on 9th December 2024 by the 2nd



Respondent. The court has also taken into consideration that judgment was delivered on 18th November 2024 and that the Appellant has since filed an appeal challenging the said decision.

3. In view of the foregoing it is only fair and just that the Applicant be given an opportunity to pursue his appeal and as such this court shall grant a stay of execution against the judgment of this court delivered on 18th November 2024 for a period of 90 days from today. Each party to bear own costs of the said application.

It is so ordered

DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 31ST DAY OF JANUARY 2025.

E. K. WABWOTO

JUDGE

In the presence of: -

Mr. Mutinda for 2nd Respondent and also holding brief for Mr. Muthami for 1st Respondent.

Mr. Mbuthia for the Applicant.

Court Assistant: Mary Ngoira

