



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA AT ELDORET**

**CIVIL APPEAL NO. 99 OF 2012**

**EMILY JEPTOO .....APPLICANT**

**VS**

**HELLEN JERUTO.....1ST RESPONDENT**

**KIPRUTO MUTAI.....2ND RESPONDENT**

**ISAAC KIPKOSGEI.....3RD RESPONDENT**

**LINUS KIPTOO CHEPKWONY..... 4TH RESPONDENT**

***(Application for stay pending appeal; appeal filed out of time; no application to extend time; No valid appeal on record; application for stay pending appeal dismissed with costs)***

**RULING**

I have before me the application dated 13 May 2013 which on the face of it is filed by three persons being Veronica Kabutie, Emily Jeptoo, and Jenifer Tongoi. It is an application brought vide various provisions of the Civil Procedure Act and the Rules, but is in a nutshell, an application for stay of execution pending appeal. The order and decree sought to be stayed is the Order and Decree issued in Kapsabet Principal Magistrate's Court, LDT No. 32 of 2011. The applicant in the application is also seeking orders of injunction to restrain the respondents from acting on the decree. The grounds upon which the application is founded are that there is an appeal filed against the decision of the subordinate court on a preliminary objection and that there is an attempt to execute the ruling which will cause irreparable loss to the applicant. The application is supported by the affidavit of Emily Jeptoo and is opposed by the respondents.

The genesis of this matter is an award of the Kapsabet Division Land Dispute Tribunal made on 6 May 2011. In those proceedings, the complainants were the respondents herein whereas the defendants were Veronica Kabutie, Emily Jeptoo and Jenifer Tongoi, the applicants herein. It was the case of the complainants that they bought part of the land parcel Nandi/Kiminda/1247 which was registered in the names of Veronica Kabutie and Emily Jeptoo, and Nandi/Kiminda/1149 which was registered in the name of Jenifer Tongoi. The Tribunal decided that the complainants had proved the purchase and made orders determining what each complainant was entitled to. It held that Kipruto Mutai was entitled to 0.5 acres out of the land Nandi/Kiminda/1149; Hellen Cheruto Kenduiywa entitled to 1.1 acres out of Nandi/Kiminda/1731 and 1 acre out of Nandi/Kiminda/1149; Isaac Kipkosge Kering entitled to 1.55 acres out of Nandi/Kiminda/1149; and Linus Kiptoo Chepkwony entitled to 1.25 acres out of Nandi/Kiminda/1731 and 0.2 acres out of Nandi/Kiminda/1732.

That award was filed in the Principal Magistrate's Court at Kapsabet in the suit Kapsabet LDT No. 32 of

2011. The award was adopted as an order of court on 30 June 2011.

Through an application dated 3 July 2012, filed in the said LDT No. 32 of 2011, the applicants, as defendants in the Kapsabet matter, sought orders to stay the decree, on the ground that the award was ultra vires, as the Tribunal did not have jurisdiction to determine the matter. A preliminary objection was raised by the complainants that the application was incompetent. The preliminary objection was heard and a ruling delivered on 9 August 2012. The court in its ruling held that as a subordinate court, it had no jurisdiction to entertain the application.

Being aggrieved by that decision, the defendants in the action, filed this appeal. The appeal was filed on 19 September 2012 (although the court stamp by error, shows the year 2009 instead of 2012). The applicants filed an application dated 3 October 2012, in the subordinate court, seeking stay pending appeal. That application was dismissed on 10 January 2013, for failure to have it prosecuted. The appellants then filed this application seeking stay pending appeal.

The application was canvassed before me on 2 July 2013. Mr. Kipkosge Choge for the appellants urged me to allow the application whereas Mr. S.K. Kitur for the respondents urged me to disallow it. After hearing counsels, it was clear to me that the application cannot succeed, and I dismissed it but reserved the issuing of reasons for today.

The order in which the appeal is founded is the order of 9th August 2012. In the appeal, it is the appellants' position that the learned Magistrate erred in upholding the preliminary objection and erred in holding that it had no jurisdiction to entertain the application dated 3 July 2012. The appeal herein was filed on 19 September 2012.

Section 79G of the Civil Procedure Act, CAP 21, provides as follows with regard to the time for filing of appeals :-

*Every appeal from a subordinate court to the High Court shall be filed within a*

*period of thirty days from the date of the decree or order appealed against,*

*excluding from such period any time which the lower court may certify as having been requisite for the preparation and delivery to the appellant of a copy of the decree or order:*

*Provided that an appeal may be admitted out of time if the appellant*

*satisfies the court that he had good and sufficient cause for not filing the appeal*

*in time.*

This appeal was filed about 40 days after the decision. It is clearly out of time. There is no application filed by the appellants to have the appeal admitted out of time. I do not therefore have a valid appeal before me upon which I can issue an order for stay of execution pending appeal. An order for stay of execution can only be issued where there is a valid appeal before court, or unless otherwise permitted. There is no valid appeal in this case and the application for stay pending appeal therefore lacks a foundation.

On this ground alone, I am unable to allow the application for stay pending appeal. It is hereby dismissed with costs to the respondents.

DATED, SIGNED AND DELIVERED THIS 9TH DAY OF JULY 2013

**JUSTICE MUNYAO SILA**

**ENVIRONMENT AND LAND COURT AT ELDORET**

***Read in open Court***

***In the Presence of:-***

***N/A for Ms Kipkosgei Choge & Co for appellants/applicants***

***N/A for Ms S.K. Kitur & Co for respondents***