



Sichei v Tuti Holdings Company Limited (Environment and Land Appeal E030 of 2025) [2025] KEELC 7411 (KLR) (30 October 2025) (Ruling)

Neutral citation: [2025] KEELC 7411 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E030 OF 2025
EC CHERONO, J
OCTOBER 30, 2025**

BETWEEN

ELIUD MICHAEL SICHEI APPELLANT

AND

TUTI HOLDINGS COMPANY LIMITED RESPONDENT

RULING

1. The Appellant/Applicant, vide a Notice of Motion application under certificate of urgency dated 23rd June 2025 seeks the following orders;
 1. (Spent)
 2. That there be a temporary stay of execution of the Judgment delivered on the 3rd April 2019 by Hon. C.M Wattimah and any implementation of the Ruling 21st May 2025 by the Respondent and or its agents, servants, employee, nominees or any other person whatsoever acting at behest of the Respondent, pending hearing and determination of this application inter partes;
 3. That there be a temporary stay of execution of the judgment delivered on the 3rd April 2019 by Hon. CM Wattimah and any implementation of the Ruling 21st May 2025 by the Respondent and or its agents, servants, employee, nominees or any other person whatsoever acting at behest of the Respondent pending hearing and determination of the Appeal.
 4. That the Honourable court be at liberty to issue any further orders in the interest of justice.
 5. That the costs of this Application be provided for.
2. The application is based on the following grounds;



- a. Ruling was delivered by Hon. Raymond Kibet in this matter on 21st May 2025 disregarding the Appellant’s affidavit showing cause why warrant of Arrest should not issue against him for failure to satisfy a decree.
 - b. The Ruling further directed that if the amount is not paid within 21 days from the date of the Ruling, the warrants of arrest against the Appellant will be issued.
 - c. The Appellant being aggrieved by the decision of the Honourable court aforementioned, filed a Memorandum of Appeal dated the 20th June 2025 with the intention of challenging the said decision to this court.
 - d. The Appellant is apprehensive that unless conservatory orders are issued, the Respondent may implement the substance of the decision conveyed in the Ruling dated 21st May 2025 by obtaining warrants of arrest and effecting the said warrants against him;
 - e. The intended Appeal shall be rendered nugatory should the Honourable court decline to grant the Appellant conservatory orders due to the aforesaid implementation of the substance of the decision conveyed in the Ruling dated 21st May 2025.
 - f. The Appellant satisfies the twin requirements for grant of conservatory orders, the arguability of Appeal as espoused in the draft Memorandum of Appeal evidenced herein and the irredeemable prejudice unless the conservatory orders are issued; Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General (2011) KLR held that;

“.....a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of the constitution” (Emphasis added).
 - g. It is in the interest of fair administration of justice and the rule of law that the application filed herewith is admitted urgently for the urgent reliefs thereof to safeguard the Appellant’s right of Appeal and consequently obviate the imminent and impending devastating violation of fundamental rights of the Appellant guaranteed by the constitution of Kenya 2010 and the attendant laws.
3. The application is also supported by the affidavit of the Appellant/Applicant sworn on even date. In the said supporting affidavit, the Applicant reiterated the averments contained in the grounds on the face of the application and stated as follows;
1. That a Ruling was delivered by Hon. Raymond Kibet in this matter on 21st My 2025, disregarding my affidavit showing cause why warrant of Arrest should not issue against me for failure to satisfy a decree.
 2. That the Ruling further directed that if the amount is not paid within 21 days from the date of the Ruling, the warrant of arrest against me will be issued.
 3. That in making the said determination of 21st May 2025, the Honourable court disregarded the uncontroverted evidence that I had presented in court to show that indeed I had already satisfied the decree and in fact even overpaid the same. Marked “EMS-2” is a copy of the said affidavit filed in the trial court.



4. That being aggrieved by the decision of the Honourable court aforementioned, I filed a Memorandum of Appeal dated the 20th June 2025 with the intention of challenging the said decision to this court.
 5. That I am apprehensive that unless conservatory orders are issued, the Respondent may implement the substance of the decision conveyed in the Ruling dated 21st May 2025 by obtaining warrants of arrest and effecting the said warrants against me.
 6. That the intended Appeal shall be rendered nugatory should the Honourable court decline to grant the conservatory orders due to the aforesaid implementation of the substance of the decision conveyed in the Ruling dated 21st May, 2025.
 7. That I have been advised by my advocates on record which advice I verily believe to be true that I satisfy the twin requirements for grant of conservatory orders, the arguability of the Appeal as espoused in the draft Memorandum of Appeal evidenced herein and the irredeemable prejudice unless the conservatory orders are issued ; Centre for Rights Education and Awareness (CREAW) & 7 Others v Attorney General (2011) KLR held that;

‘...a party seeking a conservatory order only requires to demonstrate that he has a prima facie case with a likelihood of success and that unless the court grants the conservatory order there is real danger that he will suffer prejudice as a result of the violation or threatened violation of *the constitution*.’ (Emphasis added).
 8. That it is in the interest of fair administration of justice and the rule of law that the application filed herein is admitted urgently for the urgent reliefs thereof to safeguard my right of Appeal and consequently obviate the imminent and impending devastating violation of my fundamental rights guaranteed by *the constitution* of Kenya 2010 and the attendant laws.
 9. That I am ready and willing to abide by any conditions that may be issued by the Honourable court in preservation of the suit property. In any event, the Respondent shall not suffer prejudice which cannot be compensated by costs if the reliefs herein are granted.
4. The application is opposed by the Respondent vide grounds of opposition and a Replying affidavit dated and sworn on 29th July 2025. In his Replying affidavit, the Respondent deposed as follows;
1. That I filed suit for refund of my purchase price for land I bought of Kshs. 1,5000/ and judgment was entered on the 3rd April 2019. (find copy of judgment marked VW-1)
 2. That the Applicant herein appealed to this honourable court vide Bungoma ELC Appeal NO. 9 of 2019 which was heard and dismissed. (find copy of judgment marked VW-2).
 3. That ever since I got judgment in 2019, it has risen with interests to Kshs. 2,400,000/ and the Applicant continues to file appeals and suits in this honourable court to deliberately defeat justice.
 4. That he who seeks equity must do equity but the applicant does the opposite.
 5. That I have been informed that the matter having been heard on appeal and dismissed the subsequent appeals and suits are frivolous and res judicata.
 6. That I therefore oppose this application that no prejudice or loss has been demonstrated and it is a delay tactic.



Legal Analysis And Decision

5. I have considered the Notice of Motion application, the grounds on the face of the said application, the supporting affidavit, the Replying affidavit, the submissions by the Respondent and the applicable law. The applicant in the said application is seeking stay of an order issued by the trial court on 21st May 2025 pending appeal. The brief facts of the case are that the Respondent had filed a suit against the Appellant being Sirisia SPM-ELC Case NO. 1 of 2018 seeking a refund of Kshs. 1, 500,000/-. The Appellant filed a defence denying the Respondent's claim. After the former suit was heard, the trial court entered judgment in favour of the Respondent. Being aggrieved by the said decision, the Appellant preferred an appeal to this Honourable court vide ELCLA NO. 9 of 2019. The said appeal was subsequently heard and the dismissed with costs.
6. The file was then remitted back to the trial court for execution where a Notice was issued to the Appellant/Applicant to show cause why a warrant of arrest would not issue against him for failing to pay the decretal sum. After hearing the Applicant, the trial court found that the he had not shown sufficient cause and thereby issued a warrant of arrest.
7. The application is brought under Order 42 Rule 6 CPR which provide as follows;
 - 6(2) "No order for stay of execution shall be made under subrule (1) unless-
 - a. The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant..."
8. It is a requirement that before an order for stay of execution is granted, the applicant must establish the three conditions, that is to wit; substantial loss, unreasonable delay and provide security for the due performance of the decree/order. On the first condition, superior courts have defined what constitutes substantial loss. In the case of James Wangalwa & Another v Agness Naliaka Cheseto (2012) eKLR, the court noted and pronounced itself that execution of a decree/order is a lawful process and its likelihood or even its implementation cannot therefore amount to substantial loss by itself. The applicant must establish other factors beyond the likelihood of execution or implementation of the execution process.
9. Going by the above reasoning, the Applicant in the present application argues that unless the warrants issued by the trial court in execution of the decree/order is stayed, his right of appeal would be prejudiced and the imminent and impending warrants of arrest would be devastating violation of his fundamental rights and freedoms guaranteed under the constitution of Kenya, 2020. The Applicant has surely not established substantial loss to the satisfaction of this court. I am not persuaded that I should exercise this court's discretion in favour of the Applicant. The exercise of discretion by the courts is to be guided by the law and not rules, whims or humour. It must not be arbitrary, vague and fanciful.
10. The upshot of my finding is that the Notice of Motion application dated 23rd June 2025 lacks merit and the same is hereby dismissed with costs to the Respondent.
11. It is so ordered.

READ, DATED DELIVERED AND SIGNED AT BUNGOMA THIS 30TH DAY OF OCTOBER, 2025

HON. E.C CHERONO

ELC JUDGE



In the presence of;

1. Mr. Wepoh for the Appellant/Applicant.
2. Mr. Okaka H/B for Mr. Sichangi for the Respondent.
3. M/S Nalika C/A.

