



REPUBLIC OF KENYA



**KENYA LAW**  
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**Chutha v Ndung'u (Environment & Land Case 239 of 2012)  
[2018] KEELC 4877 (KLR) (12 July 2018) (Ruling)**

Neutral citation: [2018] KEELC 4877 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 239 OF 2012**

**AK BOR, J**

**JULY 12, 2018**

**BETWEEN**

**ROBERT NGARUIYA CHUTHA ..... PLAINTIFF**

**AND**

**JOSEPH CHEGE NDUNG'U ..... DEFENDANT**

**RULING**

1. The plaintiff seeks stay of execution of the judgement of Mwangi Njoroge J and all the consequential orders pending hearing of the intended appeal. He also seeks leave to file a notice of appeal out of time against the judgement of Mwangi Njoroge J dated 4/10/2017 which I delivered on November 10, 2017. The application is made on the grounds that the plaintiff received the notice of delivery of judgement on 10/1/2018 which was two months after the judgement had been delivered. The plaintiff avers that upon receipt of the notice of judgement, his advocates promptly applied for certified copies of the proceedings, judgement and decree on 11/1/2018 and that he was furnished with a copy of judgement on 15/1/2018.
2. The plaintiff swore the affidavit in support of application. He states that he wishes to appeal against the whole judgement and that it will be fair and just if the judgement and decree are not executed against him before his intended appeal is heard and determined. He attached a copy of the notice of judgement, his advocate's letter of 11/1/2018 addressed to the Deputy Registrar of the Environment and Land Court. The letter was received on 15/1/2017. He also attached a copy of the draft memorandum of appeal.
3. The defendant opposed the application and relied on his replying affidavit filed on 27/2/2018. He maintained that the notice of delivery of judgement served on him is the same notice which was sent to the plaintiff. He urged the court to dismiss the application and award the costs to him.



4. Parties filed submissions. The defendant maintains that the plaintiff has not been keen to have a final determination of the dispute.
5. The plaintiff took issue with the fact that a different judge from the one who signed the judgement delivered it. The law allows for this under order 21 of the Civil Procedure Rules.
6. The defendant relied on the case of Stanley Karanja Wainaina & Another v Ridon Anyangu Mutubwa [2016] eKLR in which the court summarised the conditions for granting a stay of execution pending appeal. The conditions include; that the application is made without undue delay; the applicant must demonstrate that he will suffer substantial loss if the order is not granted; the applicant offers security as the court may order for the due performance of the decree or order which may ultimately be binding on him.
7. The court has considered the application, the defendant's response together with the submissions of counsels. The plaintiff neither demonstrated that he would suffer substantial loss if the orders are not granted nor did he offer security for the performance of the decree.
8. The court declines to order stay of execution of the decree issued pursuant to the judgement delivered in this matter. Leave is granted to the plaintiff to file an appeal out of time.

The defendant will have the costs of this application.

**DATED AND DELIVERED AT NAIROBI THIS 12<sup>TH</sup> DAY OF JULY 2018.**

**K. BOR**

**JUDGE**

**In the presence of: -**

**Mr. Masinde for the plaintiff**

**Mr. Ongicho for the Defendant**

**Mr. V. Owuor- Court Assistant**

