



**Yego (Suing on behalf of the Estate of the Late Albert Kibiego Lelei
– Deceased) v Tirop & another (Environment and Land Appeal
E005 of 2022) [2024] KEELC 1115 (KLR) (29 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 1115 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E005 OF 2022
EO OBAGA, J
FEBRUARY 29, 2024**

BETWEEN

**SILAS YEGO (SUING ON BEHALF OF THE ESTATE OF THE LATE ALBERT
KIBIEGO LELEI – DECEASED) APPELLANT**

AND

JAMES TIROP 1ST RESPONDENT

MARY BEKGIBEI 2ND RESPONDENT

RULING

1. This is a ruling in respect of a Notice of motion dated 17.10.2023 in which the Respondents/ Applicants are seeking to have the stay orders granted on 14.12.2022 by the lower court set aside. The Appellant/Respondent had filed a suit against the Applicants in the lower court. The Applicants raised a defence and counter-claim. After conclusion of the hearing, the Respondent’s suit was dismissed and the Applicants’ counter –claim was allowed.
2. The Respondent being aggrieved with the judgement of the lower court preferred an appeal to this court. He also filed an application for stay of execution which application was allowed vide ruling delivered on 14.12.2022. The applicants contend that the Respondent did not establish that he would suffer loss and that no sufficient cause was shown on the part of the Respondent to warrant grant of stay.
3. The Applicants state that the stay continues to perpetrate grave injustice to them as the Respondent obtained money from them but has not given them the land they purchased. They further state that the Respondents appeal has no chances of success and that the trial magistrate misdirected himself by making a finding that the suit property was sufficient security a fact which was not deposed to in the supporting affidavit to the application for stay before the lower court.



4. On 13.12.2023, the counsel for the Respondent indicated to court that they had not put in their grounds of opposition in the court file. The Advocate promised to put in the file their grounds shortly. There are no grounds which were put in as promised. I took the liberty to ask the court Assistant to ask the Respondent's lawyers to bring the grounds which they filed. Despite promising to bring the grounds, they had not done so as at 27/2/2024 when writing this ruling. They had not even filed written submissions.
5. The Applicants filed submissions on 4.1.2024. I have considered the Applicants' application as well as their submissions. Though there is no opposition to the application, I must be satisfied that the Applicants have raised sufficient reasons to warrant re-consideration of the application for stay which was filed before the lower court with a view to having it set aside in my appellate jurisdiction.
6. I notice from the supporting affidavit annexed to the Applicants' application that there were no submissions by the Applicant in the Notice of motion dated 8.3.2022 which were annexed. The Applicants only annexed their submissions. I also notice that the Applicants are not on the suit property having been evicted from the same. It is the Respondent who is in possession of the suit property. The developments he has carried out there are not disclosed. The Respondent's contention is that his late father had leased part of the suit property to many persons the Applicants included.
7. On the other hand, the Applicants contend that they purchased part of the suit property. I am not in a position to know the evidence which was adduced in support of the rival contentions as the lower court file is yet to be brought before this court. A look at the ruling of the trial magistrate shows that he considered the fact the Respondent who had preferred an appeal to this court had a right to do so.
8. In as much as the successful litigant has a right to enjoy the fruits of his or her judgment, a losing party has an equal right to be heard on appeal. If the stay orders were to be set aside and the Applicants took possession, they might dispose of the portions which would have been given to them in pursuance of the decree and this will complicate the matters should the appeal succeed. This will amount to substantial loss.
9. On the issue that the trial magistrate misdirected himself by stating that the suit property was sufficient security, there is nothing wrong in the magistrate making that finding. The magistrate having found that the Respondent will suffer substantial loss, it was within his discretion to order the kind of security which was appropriate. I therefore find that there are no sufficient grounds to have the stay order set aside. I find that the Applicants' application is devoid of merit. The same is dismissed with no order as to costs as the same was not opposed by the Respondent.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Mogambi for Respondent.

Mr. Nyachiro for Appellant.

Court Assistant –Laban

E. O. OBAGA

JUDGE



29th FEBRUARY, 2024

