



**Kiplagat & another v Murei (Environment & Land Case
34 of 2020) [2024] KEELC 914 (KLR) (22 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 914 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 34 OF 2020
EO OBAGA, J
FEBRUARY 22, 2024**

BETWEEN

JOSEPH KIPLETING KIPLAGAT 1ST PLAINTIFF

SHADRACK KIPROTICH NGISIREI 2ND PLAINTIFF

AND

BIRGEN ARAP MUREI DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 28th August, 2023 in which the Applicants are seeking the following orders:-
 1. Spent
 2. Spent
 3. Spent
 4. There be stay of execution of the judgment delivered on 6th July, 2023, the Decree issued thereto and any further proceedings in this matter pending hearing and determination of the intended appeal.
 5. Costs of the Application be awarded to the Plaintiffs/Applicants.
2. The Applicants contend that they have preferred an appeal against the judgment which was delivered on 6th July, 2023. They state that if there is no stay of execution granted, they will suffer substantial loss in that their houses will be demolished and that they will be committed to civil jail as they will not raise the Kshs.1,000,000/= they were condemned to pay in general damages.
3. The Applicants' application was opposed by the Respondent based on a replying affidavit sworn on 7th September, 2023. The Respondent states that the Applicants will not suffer any substantial loss as



they have their own land which is next to his land and that they can move to their land. He argues that the application by the Applicant is meant to delay him from realizing the fruits of his judgment.

4. The Respondent further states that the Applicants have not offered any security and that the application is an abuse of the process of the court.
5. In a further affidavit sworn on 18th September, 2023, the Applicants state that they have no alternative place to go to in case they are evicted from where they have called home for 30 years. They contend that the Respondent has not demonstrated that he will be capable of refunding money which will have been paid out including the loss which they would suffer if their appeal succeeds.
6. The parties agreed to canvass the application by way of written submissions. On 13th December, 2023 the parties were each given 7 days to file submissions. As at 23rd January, 2024 no party had filed submissions. The court set down the application for ruling and granted parties time to file their submissions before the ruling date.
7. The Applicants filed their submissions on 29th January, 2024. As at 20th February, 2024 when writing this ruling, the Respondent had not filed his submissions. I have considered the application by the Applicants as well as the opposition to the same by the Respondent. I have also considered the submissions by the Applicants. The only issue for determination is whether the Applicants have met the threshold for grant of stay of execution.
8. The conditions for grant of stay of execution are provided for under 42 Rule 6 of the Civil Procedure Rules. Firstly, an application for stay must be brought without unreasonable delay. Secondly, an Applicant has to demonstrate that he will suffer substantial loss should stay be denied. Thirdly, there has to be security as may ultimately be binding upon the Applicant on the decree.
9. In the instant case, judgment was delivered on 6th July, 2023. the Applicants were given 60 days within which they were to vacate the suit property. The application for stay of execution was filed on 30th August, 2023. I therefore find that the application was made without unreasonable delay.
10. On whether the Applicants have demonstrated that they will suffer substantial loss, it is important to consider the developments on the suit property. The Applicants have been on the suit property for about 30 years. They have put up permanent and semi-permanent structures on the suit property. If these houses were to be demolished, it will amount to substantial loss. There is also payment of Kshs.1,000,000/=. If this amount was to be paid out, there is no guarantee that the Respondent will be capable of repaying it back.
11. In the further affidavit, the applicants doubted the ability of the Respondent to repay back the general damages in the sum of Kshs.1,000,000/= in addition to meeting the cost of the demolished houses. It was therefore incumbent upon the Respondent to demonstrate that he has the ability to refund the Kshs.1,000,000/= and meet damages arising from the demolished buildings.
12. I therefore find that the Applicants will suffer substantial loss should stay of execution be denied. Consequently, I allow the applicants' application in terms of prayer 4 of the Notice of motion dated 28.8.2023. The Applicants shall deposit security for costs in the sum of Kshs.150,000/= in a joint interest earning account in the names of the Advocates involved within 30 days failing which the stay shall lapse and the Respondent will be at liberty to execute the decree. The costs of this application shall abide the outcome of the appeal.

It is so ordered.

DATED, SIGNED and DELIVERED at ELDORET on this 22nd day of FEBRUARY, 2024.



E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Misoi for Respondents

Court Assistant –Laban

E. O. OBAGA

JUDGE

22nd FEBRUARY, 2024

