



**Barsolay v Tiony (Environment and Land Case E007 of 2021 & 52 (CMC) of 2019
(Consolidated)) [2024] KEELC 785 (KLR) (15 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 785 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND CASE E007 OF 2021 & 52 (CMC) OF 2019 (CONSOLIDATED)
EO OBAGA, J
FEBRUARY 15, 2024**

BETWEEN

BRADLEY KIPCHIRCHIR BARSOLAY PLAINTIFF

AND

PETER KIBIEGO TIONY DEFENDANT

RULING

1. This is a ruling in respect of a Notice of motion dated 23.10.2023 in which the Defendant/Applicant is seeking stay of execution pending appeal. The Applicant contends that he has preferred an appeal against the judgement of this court delivered on 28.9.2023 to the Court of Appeal and that if stay of execution is not granted, he will suffer substantial loss which will ultimately render the appeal nugatory.
2. The Applicant further contends that the application has been brought timeously and that he is ready to deposit title to the suit property as security. He further argues that the appeal has high chances of success.
3. The Applicant's application has been opposed by the Plaintiff/Respondent through a replying affidavit sworn on 9/11/2023. The Respondent contends that there is no threat to execution as the Respondent is waiting for the Applicant to comply with the judgment of the court. The Respondent also contends that the Applicant has not demonstrated what substantial loss he will suffer should stay of execution not be granted.
4. I have considered the Applicant's application as well as the opposition to the same by the Respondent. I have also considered the submissions by the parties herein. The only issue for determination in this matter is whether the applicant has met the threshold for grant of stay of execution under Order 42 Rule 6 of the *Civil Procedure Rules*.
5. Under order 42 Rule 6 of the *Civil Procedure Rules*, an applicant has to demonstrate that he has brought the application without unreasonable delay, that he will suffer substantial loss should stay be



declined and that there is security offered as may ultimately be binding upon the Applicant on the decree.

6. In the instant case, the judgement being appealed against was delivered on 28.9.2023. A stay of execution was applied for orally and was granted for 30 days. The present application was filed on 24 10.2023. I therefore find that there was no delay in bringing this application.
7. On the issue of whether the Applicant will suffer substantial loss should stay be declined, it is important to look at the position on the ground. The Respondent and his family are the ones in occupation of the 13 acres which are the subject of this Appeal. The plaintiff and his family have been in occupation of the 13 acres since 1997. The Applicant only attempted to have the Respondent evicted from the 13 acres in 2019 through ELC No. 52 of 2019 which was dismissed on 28.9.2023.
8. The Applicant has not demonstrated what loss he will suffer as a result of stay of execution being denied. If the Applicant's appeal succeeds and the Respondent will have had the 13 acres transferred to him, what will simply happen is that the title will revert back to the Applicant. There is therefore no way this will render the Applicant's appeal nugatory. Demonstration of substantial loss is the cornerstone for grant of stay of execution. There is no evidence that if the 13 acres are transferred to the Respondent he will dispose them off. This being the case, I find that the Applicant has not demonstrated what substantial loss he will suffer should stay be declined.
9. The issue of security can only be considered where an Applicant has demonstrated substantial loss. As there is no demonstration of substantial loss, I find that the Applicant's application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so orders.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 15TH DAY OF FEBRUARY, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Lelei for Applicant.

Mr. Kipnywekwei for Respondent.

Court Assistant -Laban

E. O. OBAGA

JUDGE

15TH FEBRUARY, 2024

