



**Mugambi v Rutere (Environmental and Land Originating Summons
27 of 2018) [2024] KEELC 1730 (KLR) (20 March 2024) (Ruling)**

Neutral citation: [2024] KEELC 1730 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 27 OF 2018**

CK NZILI, J

MARCH 20, 2024

BETWEEN

MARTIN MUGAMBI PLAINTIFF

AND

MARTIN KINOTI RUTERE DEFENDANT

RULING

1. By an application dated 14.12.2023, the court is asked to stay the execution of a decree dated 20.2.2023, pending hearing and determination of a Court of Appeal Case No. E104 of 2023. The grounds are set out on the face of the application and in a supporting affidavit sworn by Martin Kinoti Rutere on 14.12.2023. The applicant avers that following the judgment delivered on 14.12.2022, he filed a notice of appeal. He says costs were taxed by the deputy registrar he is now threatened with execution, yet his appeal has arguable points and high chances of success, though it is yet to be heard and determined.
2. The applicant avers the respondent is threatening to execute costs of Kshs.191,785/= unless the same is paid. He avers that he is willing to deposit as security a log book for motor vehicle KCK 654X Toyota Pro-box worthy Kshs.500,000/=, for the due performance of the decree should the appeal not succeed. Further, the applicant avers he is ready and willing to comply with any other reasonable directions should the court grant a conditional stay.
3. The application is opposed through a replying affidavit sworn by Martin Mugambi on 8.1.2024, for lacking merits, being filed after an unexplained, inordinate, and inexcusable delay. The respondent avers that even though the appeal was filed on 14.6.2023, the applicant has waited until costs were taxed, and a demand letter was sent, to file this application. The respondent avers no substantial loss, prejudice or damage will be occasioned if the applicant complies with the court decree.
4. A party seeking a stay of execution has to apply on time, demonstrate substantial loss or damage and provide security for the due realization of the decree should the appeal not succeed. Substantial



loss is what is to be prevented from happening which is likely to change the very essential core of the appeal. In *James Wangalwa vs Agnes Naliaka Cheseto* (2012) eKLR, the court observed that an execution process does not amount to substantial loss since it is a regular process and that a party must, through cogent and tangible evidence indicate other extenuating factors likely to negate, affect or change the substratum of the appeal. The law does not set the maximum or minimum time of delay. It all depends on the peculiar circumstances of each case since even one day's delay could be unreasonable and inordinate.

5. In *RWW vs EKW* (2019) eKLR, the court said the purpose of a stay of execution is to preserve the two rights for the unsuccessful party, exercising the right of appeal against the right of the successful party in enjoying the fruits of his judgment.
6. The applicant seeks to stay the payment of costs assessed at Kshs.191,785/=. The appeal is against an invalidation and the registration of title to L.R No. Kiirua/Kiirua/Nkando/777 in favor of the respondent, by a decree dated 20.2.2023. The certificate of costs was issued on 7.12.2023.
7. The substratum of the appeal is the land and not the costs. The applicant does not state whether the substratum of the appeal is at risk of dissipation. He has not said how the payment of costs to the respondent would be irreversible should the appeal succeed. In *Kenya Shell Ltd vs Kibiru & another* (1986) KLR 140, the court said there was no evidence of substantial loss to the applicant either in the matter of paying the damages awarded, which would cause difficulty to the applicant itself or because it would lose its money since if payment were made, the respondent would be unable to repay the decretal sum plus costs.
8. In *NIC Bank Ltd vs Aquinas Francis Wasike & another* (2006) eKLR, the court said while it is the legal duty of the applicant to prove the allegations that, an appeal would be rendered nugatory because the respondent would be unable to pay back the decretal sum, it was unreasonable to expect such an applicant to know in detail the resources owned by the respondent or lack of them.
9. In this application the applicant has not said that the respondent is a man of straw who may not refund the costs.
10. The applicant has not expressed any apprehension over the respondent's financial circumstances, bonafide and or readiness to refund the costs, should the appeal succeed. The valuation of the motor vehicle has not been attached. The applicant has not offered to deposit the cash in court. He has not said that he was unable to pay the costs hence the reason it should be substituted with a logbook. Similarly, the applicant has not explained the delay of over one and a half years, since filing the appeal and over three months after the taxation of the bill of costs.
11. In my considered view, the execution for costs does not go to the substratum of the appeal. In the circumstances, I find no basis to grant a stay off the execution over costs. The application is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 20TH DAY OF MARCH, 2024

In presence of

C.A Kananu

Miss Mugo for the plaintiff

HON. C K NZILI

JUDGE

