



**Nguriareng & 2 others v Plapan (Suing as the Administrator of the Estate of Maua Chesokor)
(Civil Appeal (Application) E028 of 2023) [2024] KECA 266 (KLR) (8 March 2024) (Ruling)**

Neutral citation: [2024] KECA 266 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAKURU
CIVIL APPEAL (APPLICATION) E028 OF 2023
FA OCHIENG, PM GACHOKA & WK KORIR, JJA
MARCH 8, 2024**

BETWEEN

**LORENG NGURIARENG 1ST APPLICANT
POLOKOU NGURIARENG 2ND APPLICANT
CHARITO NGURIARENG 3RD APPLICANT**

AND

**LILIAN JANICE PLAPAN (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF MAUA CHESOKOR) RESPONDENT**

*(An application for stay of execution from the judgement and decree of
the Environment and Land Court of Kenya at Kitale (Dr. IUR Nyagaka,
J.) delivered on 22nd February, 2023) in Kitale ELC No. 26 of 2020 (OS))*

RULING

1. The applicants have jointly filed a Notice of Motion dated 19th June, 2023 under rule 5 (2) (b) of the [Court of Appeal Rules](#) seeking stay of execution of the judgment and decree delivered on 22nd February, 2023 in Environment and Land Court (ELC), Kitale [Case No. 26 of 2020 \(OS\)](#) pending the hearing and determination of an intended appeal. The applicants further seek for an order stopping the county surveyor, West Pokot County from ascertaining the acreage, carving out and transferring part of land parcel No. West Pokot /Kanyarkwat/'B'/26 to the respondent as ordered by the trial court. The application is supported by the grounds on the body of the Motion and the supporting affidavit of the 1st applicant sworn on 19th June 2023.
2. The applicants are dissatisfied with the findings of the trial court delivered on 22nd February, 2023 (Dr. IUR Nyagaka J.) in Kitale [ELC No. 26 of 2020 \(OS\)](#). In it, the trial court declared that the respondent had adversely possessed the disputed portion of land lying between the boundary shown to be existing



between land parcel no. West Pokot/Kanyakwat 'B'/26 and West Pokot/Kanyakwat 'B'/21 and the natural feature known as river Murkong all the way to the confluence of said river with the one known as river Kanyarkwat. In that vein, the county surveyor was directed to survey its acreage for transfer to the respondent. Consequently, a permanent injunction was issued restraining the applicants from trespassing thereon. The respondent was further awarded costs of the suit.

3. The applicants urged this Court to grant the application for the following reasons: that the applicants are intent on prosecuting an appeal before this Court having filed a notice of appeal dated 4th March, 2023; that unless stay is granted, the applicants will suffer substantial loss; that the appeal will be rendered nugatory since transferring the property back to the applicants will be tedious; that the applicants will be exposed and lose title; that absent status quo, favoring the registration and ownership by the applicants, the appeal will be rendered an academic exercise; and that the application was bereft of delay.
4. In response to the application, the respondent filed her deposition sworn on 12th October, 2023. The respondent urged this Court to dismiss the application with costs for the following reasons: the application was instituted after unreasonable delay; that the application was not made in good faith since it was only filed when the respondent obtained warrants of arrest against the applicants; that the applicants are indolent and thus undeserving of the orders sought; that the applicants failed to demonstrate that their appeal was merited; that the applicants failed to address the court as to security for costs; and that the applicants failed to establish the loss they were exposed to suffer. On the contrary, the respondent averred that the applicants were not likely to suffer any loss since the orders of the trial court did not affect their occupancy.
5. During the hearing of the application, the parties herein relied on their respective rival written submissions which were highlighted orally. The applicants' written submissions dated 12th October, 2023 rehashed the contents of the application to submit that the appeal was arguable and would be rendered nugatory if the orders sought are not granted.
6. The respondent on her part filed written submissions similarly dated 12th October, 2023. She relied on her replying affidavit to submit that the application was unmerited and ought to be dismissed with costs since it failed to meet the parameters set out in rule 5 (2) (b) of the [Court of Appeal Rules](#).
7. The principles enunciated in applications under rule 5 (2) (b) of this [Court's Rules](#) for stay of execution pending appeal or intended appeal, are well settled. To be successful, an applicant must demonstrate that the intended appeal or appeal (if any) is arguable and not merely frivolous. Secondly, an applicant must establish that the appeal, or intended appeal, if successful, would be rendered nugatory if stay is denied. To succeed, an applicant must satisfy both limbs.
8. On the first limb of the conjunctive principles set out above herein, this Court in [Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others](#) [2013] eKLR held that on the arguability aspect, an arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one that is not frivolous.
9. Turning to the present application, we note that the applicants have filed a notice of appeal dated 4th March, 2023 lodged before the Deputy Registrar, ELC, Kitale. However, the applicants failed to annex a draft or filed memorandum of appeal to establish the grounds that they intend to rely on in prosecuting the appeal. We have also read the grounds in support of the application and the supporting affidavit. We note that there is not even one discernible ground that can be deemed as arguable on the face of the application or the supporting affidavit. In their absence, the applicants have not demonstrated before this Court that the intended appeal is arguable. In actual sense the applicants



are basing their arguments in a vacuum. It does not matter that the applicants are acting in person. A party appearing in this Court, whether represented or not, is bound by the same rules and when one acts in person they must ensure that they comply with the requirements under the rules.

10. Having found that the first principle has not been demonstrated, we find no reason to establish whether the appeal will be rendered nugatory if stay is not granted. After all, both principles must of necessity be established for an applicant to succeed in an application of this nature.
11. Consequently, we do not hesitate to find that the applicants have failed to satisfy the threshold set out in rule 5 (2) (b) of the *Court of Appeal Rules*. We therefore find the application unmerited and it is hereby dismissed in its entirety with costs.

DATED AND DELIVERED AT NAKURU THIS 8TH DAY OF MARCH, 2024.

F. OCHIENG

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JUDGE OF APPEAL

M. GACHOKA CIArb, FCIArb

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JUDGE OF APPEAL

W. KORIR

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

signed

DEPUTY REGISTRAR

