



Sikoyo (Suing on Behalf of Joseph Nakodony Nkadayo) v Muimu (Miscellaneous Application E013 of 2023) [2024] KEELC 3628 (KLR) (30 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3628 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
MISCELLANEOUS APPLICATION E013 OF 2023
MN GICHERU, J
APRIL 30, 2024**

BETWEEN

JAMES SABAYA SIKOYO (SUING ON BEHALF OF JOSEPH NAKODONY NKADAYO) APPLICANT

AND

BENSON SIYANGOT MUIMU RESPONDENT

RULING

1. This ruling is on the notice of motion dated 13/9/2023. The motion which is by the applicant is brought under Sections 1A, 1B, 3, 3A, 63 (c), 79G and 95 of the *Civil Procedure Act*, Order 22 Rule 23 6(1) and (2), 50 rule 6, 51 rule 1 of the *Civil Procedure Rules* and all enabling provisions of the law.
2. The motion seeks the following residual prayers.
6. Status quo pending the hearing and determination of the intended appeal against the judgment dated 13/6/2023 which dismissed the applicant's suit.
8. Extension of time to appeal against the decision in Loitoktok Principal Magistrates Court ELC Case No. E004/22.
9. That the costs of the application be provided for.
3. The motion is based on eleven grounds and it is supported by an affidavit dated 13/9/2023 sworn by James Sabaya Sikoyo which has eight (8) annexures and supplementary affidavits by Julius Mbevi Mutune and Isaya Seneti Mwato which have three (3) and two (2) annexures respectively. The gist of the above material is as follows.

Firstly, the applicant is the lawful allottee of land which measures about 2 acres and which is located along Emali –Loitoktok road at Isinet area in Loitoktok sub-county. It was allocated to him by



Imbirikani Group Ranch on 7/12/2007. It was given register No. 914. The land was meant to replace his two (2) acres which were under irrigation.

Secondly, he occupied the land and developed it. He has put up shops among other infrastructure on the land.

Thirdly, on 30/9/2023, the respondent entered the applicant's land with a bulldozer and started excavating and levelling it. The encroachment was reported at Isinet Police Patrol Base and also to the assistant chief.

Fourthly, the applicant was not able to file an appeal against the judgment of the lower court dated 13/6/2023 because of delay in the issuance of the typed proceedings and judgment by the lower court and hiring new counsel who had to familiarize himself with the case.

4. The motion is opposed by the respondent who has sworn a replying affidavit dated 24/10/2023 in which he deposes as follows.

Firstly, there is no positive order capable of being stayed.

Secondly, the alleged suit land is non-existent because the applicant has not shown or filed any beacon certificate or any other document defining the suit property.

Finally, the intended appeal has no chances of success as it introduces new issues that were not pleaded in the lower court.

5. Counsel for the parties filed written submissions on 29/2/2024 and 4/3/2024 respectively and identified the following issues for determination.

- a. Whether the reliefs sought are for granting.
- b. Whether the applicant had a valid letter of allotment to the suit property.
- c. Whether the applicant has clearly defined the suit property.
- d. Whether the applicant seeks to introduce new information on appeal that was not disclosed in lower court.
- e. Whether the applicant should be granted leave to file appeal out of time.

6. I have carefully considered the motion in its entirety including the affidavits by both sides, grounds, submissions, case law cited and the issues identified by Learned Counsel for the parties. I find that issues (b), (c) and (d) should await the substantive appeal which is not yet filed. If I were to decide on them at this stage, then I will be determining the appeal before I hear it. It is therefore premature to make any decision thereon.

7. On the first issue, I find that the order of status quo should be granted more so because the applicant is in occupation of the two acres of land and this is not disputed. It is also not disputed that he has been in such occupation since the year 2007.

8. On the second issue, I find that the applicant has established good and sufficient cause for not filing the appeal on time, namely, the delay in obtaining a certified copy of proceedings and judgment and the intervening recess of the court and the engagement of new counsel.

For the above stated reasons, I order that the status quo be maintained pending the hearing and determination of the appeal.

Secondly, I allow the applicant 30 days from the date hereof to file the intended appeal.



It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 30TH DAY OF APRIL 2024.

M.N. GICHERU

JUDGE

