



**Seyiano & 3 others v Chairman Osilalei Group Ranch & 6 others (Civil Application E286 of 2021) [2022] KECA 854 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KECA 854 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E286 OF 2021  
AK MURGOR, A MBOGHOLI-MSAGHA & KI LAIBUTA, JJA  
APRIL 28, 2022**

**BETWEEN**

**MUTUNICET MAYA SEYIANOI ..... 1<sup>ST</sup> APPLICANT  
SITEYIA ENE SEYIANOI ..... 2<sup>ND</sup> APPLICANT  
SAIYATO ENE SAIYIATTANO MURAYA ..... 3<sup>RD</sup> APPLICANT  
TANA EK ENE SEYIANOI ..... 4<sup>TH</sup> APPLICANT**

**AND**

**CHAIRMAN OSILALEI GROUP RANCH ..... 1<sup>ST</sup> RESPONDENT  
SECRETARY OSILALEI GROUP RANCH ..... 2<sup>ND</sup> RESPONDENT  
TREASURY OSILALEI GROUP RANCH ..... 3<sup>RD</sup> RESPONDENT  
LENKISHIRINI OLE TIONG'A NKULIDI ..... 4<sup>TH</sup> RESPONDENT  
BOI OLE PARKISALE ..... 5<sup>TH</sup> RESPONDENT  
DISTRICT LAND REGISTRAR KAJIADO ..... 6<sup>TH</sup> RESPONDENT  
ATTORNEY GENERAL ..... 7<sup>TH</sup> RESPONDENT**

*(Being an application for stay of execution from the Judgment and Decree of the ELC at Kajiado (C. Ochieng, J.) delivered on 3rd March 2021 in ELC Case No. 476 of 2017)*

**RULING**

1. The applicants (Mutunicet Maya Seyiano Siteyia Ene Seyiano Saiyato Ene Saiyiattano Muraya and Tanaek Ene Seyiano) are aggrieved by the judgment and decree of the Environment and Land Court (ELC) at Kajiado delivered on 3<sup>rd</sup> March 2021 where the trial judge determined that they had failed to



prove their case on a balance of probabilities and, in so finding, dismissed their suit with costs to the respondents.

- 2 In their suit, the applicants sought orders for the 6<sup>th</sup> respondent, the District Land Registrar, Kajiado, to cancel or revoke Certificate of Titles for Land Reference No. Kajiado/Osilalei/173 and Land Reference No. Kajiado /Osilalei/179 (the suit properties) registered in the names of the 5<sup>th</sup> and 4<sup>th</sup> respondents, Boi Ole Parkisale and Lenkishirini Ole Tiong'a Nkulidi, and for the 6<sup>th</sup> respondent to visit the suit properties to ascertain the boundary between the parcel of land owned by the applicants and Osilalei Group Ranch as represented by the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> respondents. Also sought was a permanent injunction against the Group Ranch to restrain it from allocating the suit properties to the 4<sup>th</sup> and 5<sup>th</sup> respondents, and an order of eviction.
- 3 Pursuant to the judgment, the applicants have sought to file an appeal against the judgment, and have brought a Notice of Motion dated 14<sup>th</sup> July 2021 under section 3A and 3B of the [Appellate Jurisdiction Act](#), rules 5(2) (b) of the [Court of Appeal Rules](#), 2010 seeking a stay of execution of the judgment, pending the hearing and determination of the appeal, and that the costs of this application be provided for.
- 4 The Motion was brought on nine grounds set out on its face, and was supported by the affidavit of Mutunicet Maya Seyiano, the 1<sup>st</sup> applicant, sworn on the same date, and by written submissions wherein it was contended that, at the time the hearing was concluded in 2020, the 4<sup>th</sup> and 5<sup>th</sup> respondents, who were the main trespassers, had moved out of the suit properties together with their livestock on being apprehensive of the outcome and consequences of the judgment; that following delivery of the judgment dismissing the applicants' suit, the 4<sup>th</sup> and 5<sup>th</sup> respondents relocated back to the suit properties with all their livestock and have destroyed the vegetation, and are burning charcoal.
- 5 It was further contended that the applicants have lodged an appeal to this Court, and that unless a stay of execution is granted, the appeal will be rendered nugatory as the 4<sup>th</sup> and 5<sup>th</sup> respondents will continue to waste and alienate the applicants from the suit properties, and they will suffer substantial loss; that, the respondents will not be prejudiced by the orders sought, and that it is in the interest of justice, equity and conscience that this application be granted; that the appeal had a high chance of success.
- 6 In a replying affidavit sworn on 28<sup>th</sup> September 2021, the 4<sup>th</sup> respondent, Boi Ole Parkisale opposed the application and deponed that the Motion is an abuse of the court process and thus unmerited. The 4<sup>th</sup> and 5<sup>th</sup> respondents also filed written submissions.
- 7 In so far as applications filed under *rule 5 (2) (b)* of this Court rules are concerned, the threshold requirement to be satisfied are amplified in the case of [Republic vs Kenya Anticorruption Commission and 2 others \[2009\] eKLR](#) thus:

*The court exercises unfettered discretion which must be exercised judicially. The applicant needs to satisfy the Court that first, the appeal or intended appeal is not frivolous, that is to say, that it is an arguable appeal. Second, the Court must also be persuaded that were it to dismiss the application for stay and later the appeal or intended appeal succeeds their results or success could be rendered nugatory”.*

- 8 The above notwithstanding, in the application before us, the applicants are seeking a stay of execution of what is considered to be a negative order of the ELC, in that the court merely dismissed the applicant's suit. The applicants did not seek an order of injunction to restrain the 4<sup>th</sup> and 5<sup>th</sup> respondents from occupying the suit properties.



9 In the case of *Western College of Arts and Applied Sciences vs EP Oranga\* 3 others [1976] eKLR*, this Court explained:

*...what is there to be executed under the judgement the subject of the intended appeal? The High Court has merely dismissed the suit with costs. Any execution can only be in respect of costs in Wilson v Church that high court had ordered the trustees of a fund to make a payment out of that fund. In the instant case, the High Court has not ordered any of the parties to do anything, or to refrain from doing anything, or to pay any sum. There is nothing arising out of the High Court judgment for this Court, in an application for a stay.”*

10 Since the ELC dismissed the applicants’ suit, there is nothing to stay as a consequence of which there is nothing that demonstrates how the appeal will be rendered nugatory.

11 As such, the applicants having failed to satisfy the two threshold requirements, the Notice of Motion dated 14<sup>th</sup> July 2021 is dismissed. Costs in the appeal.

*It is so ordered.*

**DATED AND DELIVERED AT NAIROBI THIS 28<sup>TH</sup> DAY OF APRIL, 2022.**

**A.K. MURGOR**

.....

**JUDGE OF APPEAL**

**A. MBOGHOLI-MSAGHA**

.....

**JUDGE OF APPEAL**

**DR. K.I. LAIBUTA**

.....

**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

