



Naanyu v Metto & another (Sued as the administrators of the Estate of the Late Elizabeth Jepchoge Sirma (Deceased) (Environment and Land Appeal E022 of 2023) [2024] KEELC 3923 (KLR) (29 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3923 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL E022 OF 2023
EO OBAGA, J
APRIL 29, 2024**

BETWEEN

LIZZY NAANYU APPELLANT

AND

MOSES KIBET METTO & JOSHUA KIPKEMBOI METTO (SUED AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE ELIZABETT JEPCHOGE SIRMA (DECEASED) RESPONDENT

RULING

1. This is a ruling in respect of a Notice of motion dated 1.12.2023 in which the Appellant/Applicant is seeking the following orders:-
 1. Spent
 2. Spent
 3. That this Honourable Court be pleased to suspend the Certificate of Lease for land parcel number Eldoret Municipality Block 14/594 issued to Moses Kibet Metto And Joshua Kipkemboi Metto pursuant to the decree subject of this appeal pending the hearing and determination of this application and thereafter this appeal.
 4. That there be stay of the execution and/or suspension of and/or giving effect of the judgment and/or the decree issued on 2nd September, 2022 in respect of land parcel number Eldoret Municipality Block 14/594 the subject matter in Eldoret CMELC No. E094 Moses Kibet Metto And Joshua Kipkemboi Metto (suing as the Administrators of the estate of the late Elizabeth Jepchoge Sirma) vs Lizzy Naanyu pending the hearing and determination of the appeal.



5. That this Honourable Court be pleased to direct and/or order the County Land Registrar to register a restriction on the title number Eldoret Municipality Block 14/594 pending the hearing and determination of this application, the appeal and thereafter the subordinate court suit Eldoret CMELC No. E094 of 2022.
6. That the costs of this application be borne by the Respondents.
2. The Respondents had filed a suit before the Chief Magistrates' court against the Applicant. This suit proceeded ex-parte and a judgment was delivered on 23.8.2022. A decree in favour of the Respondent was issued on 2.9.2022 and the same was executed and a certificate of lease was issued in favour of the Respondents on 22.6.2023.
3. The Applicant filed a Notice of motion dated 24.8.2023 in which she sought a number of orders among them stay of execution of the decree issued on 2.9.2022, registration of a restriction on title No. Eldoret Municipality Block 14/594, suspension of certificate of lease issued to the Respondents, cross examination of process server who allegedly served pleadings in the lower court case, setting aside of the ex-parte judgement and consequential orders and for leave to defend the suit.
4. The Applicant's application of 24.8.2023 was heard and the same was dismissed in its entirety vide ruling delivered on 28.11.2023. This is what triggered the filing of an appeal to this court against the ruling of 28.11.2023 and the current application.
5. The Applicant contends that she was the registered owner of LR. No. Eldoret Municipality Block 14/594 (suit property) which she purchased from one Charles Shibweche Makanga on 26.8.2011. she obtained certificate of lease on 24.10.2012 and has since been in possession. She only became aware of the ex-parte judgment when the Respondents went to the suit property in a bid to evict her.
6. The Applicant states that on the day when the process server alleges to have served her with pleadings, she was not in town having accompanied the body of her friend who had passed on at Moi Teaching and Referral Hospital and was being interred at Lessos.
7. The Respondents opposed the Applicant's application based on a replying affidavit sworn on 18/12/2023. The Respondents contend that the Applicant was served with court summons which she chose to ignore. They state that the suit property was illegally transferred from their mother's name and that the matter has been subject of investigations by the DCI for a long time and that this application is an abuse of the process of court which is only meant to deny them the fruits of their judgment.
8. This court directed the parties to file their submissions. The Applicant filed her submissions on 22.1.2024. The Respondents filed their submissions on 30.1.2024. I have carefully considered the Applicant's application as well as the opposition to the same by the Respondents. I have also considered the submissions by the parties herein. The first issue for determination is whether there can be stay of execution granted pending appeal under order 42 Rule 6. The second issue is whether the certificate of lease which was issued to the Respondents should be suspended. The third issue is whether this court should direct the County Land Registrar to register a restriction on title number Eldoret Municipality Block 14/594.
9. On the first issue, it is clear that the decree issued on 2.9.2022 was fully executed and a certificate of lease was given to the Respondents on 22.6.2023. There is therefore nothing remaining for this court to stay pending appeal filed herein. In other words, the application for stay was made after execution had been completed. There is therefore no stay of execution which can be granted under order 42 Rule 6 of the Civil Procedure Rules.



10. On the second issue, the court is being asked to suspend the certificate of lease issued to the Respondents. No basis has been shown for the suspension of the certificate of lease. The court is yet to make a finding whether the Applicant was served with summons or not. Unless there is a pronouncement of this issue by a competent court, the ex-parte judgement remains prima facie a regular judgment and there can be no suspension of the certificate of lease.
11. However, on the third issue, there are grounds to show that there is need to preserve any improper dealings on the suit property by the Respondents. If it be true that the Applicant has been on the suit property since 2011, there are questions which need to be answered as to why no action was taken by the Respondents earlier than 2022. The Respondents are simply claiming that there have been investigations over the suit property for along time without any evidence of such investigation.
12. I therefore only grant prayer (5). The costs of this application shall abide the outcome of the Appellant's appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29TH DAY OF APRIL, 2024.

E. O. OBAGA

JUDGE

In the virtual presence of;

M/s Odwa for Appellant/Applicant

Court Assistant –Laban

E. O. OBAGA

JUDGE

29TH APRIL, 2024

