



**Republic v National Land Commission (NLC); Vekaria (Exparte Applicant) (Environment and Land Judicial Review Case E001 of 2023) [2024] KEELC 3449 (KLR) (29 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3449 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ELDORET  
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE E001 OF 2023**

**EO OBAGA, J**

**APRIL 29, 2024**

**IN THE MATTER OF AN APPLICATION FOR JUDICIAL REVIEW**

**ORDERS OF MANDAMUS**

**AND**

**IN THE MATTER OF ARTICLE 10, 20, 21, 23, 40, 47, 48, 50,  
159 AND 259 OF THE CONSTITUTION OF KENYA, 2010**

**AND**

**IN THE MATTER OF THE CIVIL PROCEDURE RULES 2010**

**AND**

**IN THE MATTER OF THE LAW REFORM ACT**

**AND**

**IN THE MATTER OF THE NATIONAL LAND COMMISSION ACT**

**AND**

**IN THE MATTER OF THE GOVERNMENT PROCEEDING ACT**

**BETWEEN**

**BETWEEN**

**REPUBLIC ..... APPLICANT**

**AND**

**NATIONAL LAND COMMISSION (NLC) ..... RESPONDENT**

**AND**

**RAMJI D. VEKARIA ..... EXPARTE APPLICANT**



## RULING

1. This is a ruling in respect of a notice of motion dated December 6, 2023 in which the Applicant seeks the following orders: -
  1. That an order be issued staying the decree/orders arising out of the ruling delivered in the suit herein pending hearing and determination of Eldoret COA Application E058 of 2023 National Land Commission vs. Ramji D. Vekaria & 3 others.
  2. That this Honourable court be pleased to stay the implementation of the decree/orders issued in the suit herein.
  3. That the cost of the application be provided for.
2. The Applicant contends that it has filed an application before the Court of Appeal seeking enlargement of time to file an appeal against the judgment which was delivered on 18.3.2022. The Applicant contends that if stay of execution is not granted, the Respondent will execute the decree and the Applicant will suffer substantial loss.
3. The Application is opposed by the Respondent based on grounds of opposition dated 22.1.2024 and filed in court on January 23, 2024. The Respondent contends that the Applicant's application is fatally and incurably defective and is an abuse of the process of court.
4. The Respondent further contends that the court is *functus officio* and that there is no pending appeal which can warrant stay under Order 42 Rule 6 (1) of the [Civil Procedure Rules](#) and that in any case prayer (2) of the application is indefinite and incapable of being granted.
5. I have considered the Applicant's application as well as the opposition to the same by the Respondent. The only issue for determination is whether stay of execution can be granted. To begin with, there is no appeal pending which can be a basis for invoking the provisions of Order 42 Rule 6(1) of the [Civil Procedure Rules](#). Secondly, prayer (2) is couched in a way that is indefinite. Even if the Applicant will be granted enlargement of time by the Court of Appeal, and the Appeal finally succeeds, the appeal will not be rendered nugatory as this is a monetary decree.
6. There is no mention that the Respondent will be unable to refund the decretal sum should the intended appeal succeed. I therefore find no merit in this application which is dismissed with costs to the Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 29<sup>TH</sup> DAY OF APRIL, 2024.**

**E. O. OBAGA**

**JUDGE**

**In the virtual absence of parties who were aware of the date of delivery of ruling.**

Court Assistant –Laban

**E. O. OBAGA**

**JUDGE**

**29<sup>TH</sup> APRIL, 2024**

