



**Juma v Juma & another (Environment and Land Appeal
33 of 2022) [2024] KEELC 3708 (KLR) (24 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL 33 OF 2022**

NA MATHEKA, J

APRIL 24, 2024

BETWEEN

AZIZA KHAMISI JUMA APPELLANT

AND

KHAMIS JUMA 1ST RESPONDENT

ABDULRAHMAN MOHAMED OMAR 2ND RESPONDENT

RULING

1. The application is dated 30th November 2023 and is brought under Section 3, 3A & 63(e) of The [Civil Procedure Act](#) Order 42 Rule 6, Order 50(6) & Order 51 Rule 1 of The Civil Procedure Rules seeking the following orders;
 1. That the Application filed herewith be certified as urgent and service upon the Respondent herein be dispensed with in the first instance.
 2. That this Honourable Court be pleased to grant the Applicant leave to the firm of J.O. Magolo & Co. Advocates to come on record Appeal out of time.
 3. That this Honourable Court be pleased to issue stay of execution of the judgment delivered on the 28th November 2023 pending the hearing and determination of the Application herewith inter-parties.
 4. That this Honourable Court be pleased to issue stay of execution of the ruling delivered on the 28th November 2023 pending the hearing and determination of the Appeal filed here from.
 5. That costs hereof be provided for.
2. It is supported by the Affidavit of Aziza Khamisi Juma and upon the grounds that on the Appellant filed the appeal herein as against the respondents. That judgment was delivered in favour of the



Respondents on the 28th November 2023. That which means that the Appellant is to be evicted from the suit property which is where they have been lived for years. That Judgement was delivered in absence of the Appellant/ Applicant hence orders of stay could not be sought then. That the Appellant/Applicant being aggrieved by the judgment in its entirety seeks to appeal against the same. That there is, in the meantime, real and imminent threat of execution of the ruling herein. That the Appellant/Applicant fears that were execution hereof to proceed the intended Appeal shall be rendered nugatory. That the Appellant/Applicant is willing to abide conditions set by this Honourable court precedent to the granting of the orders sought in her Application. That the instant Application has been brought without inordinate delay and in good faith.

3. The Respondent opposed the application stating that a successful litigant herein the registered owner of the suit land should not be denied their constitutional right to enjoy the fruits of their judgement. That the Applicant has failed to meet the threshold of granting relief under order 46 rule 2.
4. This court has considered the application and the submissions therein. The principles for granting stay of execution are provided for under Order 42 rule 6 (1) of the Civil Procedure Rules as follows:

No appeal or a second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order, but the Court appealed from may for sufficient cause order stay of execution of such decree or order and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred, shall be at liberty, on an application being made, to consider such application and to make such orders thereon as may to it seem just, any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have the orders set aside.”

5. Order 42, rule 6 states:

No order for stay of execution shall be made under sub-rule (1) unless:-

- a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
- b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. The principles that the court must consider in order to grant an application for stay of execution pending appeal are set out in the case of Global Tours and Travels Limited Nairobi Winding Up Cause No. 43 of 2000 cited in Kenya Power & Lighting Company Ltd vs Esther Wanjiru Wokabi 2014 eKLR where Ringera J (as he then was) stated as follows:

7. As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the interest of justice.. the sole question is whether it is the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously”.



8. The court must therefore consider the following principles;
 - a) Whether the application was filed without undue delay
 - b) Whether the applicant has established that he has an arguable appeal
 - c) Whether the applicant has established sufficient cause that it is in the interest of justice to grant the orders sought.
 - d) Whether the applicant is willing to furnish security for costs
9. On perusal of the court record I find the Appellant filed an application dated 30th November 2023 seeking to set aside the judgment delivered by this court on the 23rd November 2023. The same was filed in court on the 4th December 2023. The Applicants have attached a notice of Appeal dated 30th November 2023. Regarding the question as to whether the applicant has an arguable appeal, I am unable to determine whether the Applicant has filed the Memorandum of Appeal as what is on record is a Notice of Appeal. I am therefore unable to establish whether the Applicant has an arguable appeal. No memorandum of appeal to the Court of Appeal has been annexed to ascertain the grounds of appeal. Without any grounds the Applicant has failed to show sufficient cause for the stay to be granted. Secondly, I am not persuaded that if the application is not granted, the success of the appeal, were it to succeed, would be rendered nugatory. I grant the order for J.O Magolo & Company Advocates to come of record. Be that as it may, I find that the applicant has not fulfilled the above grounds mentioned to enable me grant the stay. I find the application dated 30th November 2023 is unmerited and I dismiss it with costs.
10. It is so ordered.

DELIVERED, DATED AND SIGNED AT MOMBASA THIS 24TH DAY OF APRIL 2024.

N.A. MATHEKA

JUDGE

