



**Ali v Said (Environment and Land Appeal E002 of 2022)
[2024] KEELC 3346 (KLR) (22 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3346 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E002 OF 2022
PM NJOROGE, J
APRIL 22, 2024**

BETWEEN

AMINA ABDI ALI APPELLANT

AND

SAHARA ABDI SAID RESPONDENT

RULING

1. This application is dated 25/10/2023 and seeks orders;
 1. This Honourable Court be pleased to order stay of the ruling and all consequential orders delivered by Hon. Justice P.M Njoroge in Environment and Land Court at Isiolo Civil Appeal No. E002 of 2022 on 5th December, 2022 pending determination of the Court of Appeal at Nyeri, Civil Appeal No. COACA/167/22 in the matter of appeal between Amina Abdi Ali v Sahara Abdi Said.
 2. This Honourable Court be pleased to order stay of the taxation proceedings by way of Defendant’s Party to Party Bill of Costs dated 26th September, 2023.
 3. The costs of this application be in the cause.
2. The application is supported by the affidavit of Amina Abdi Ali and has the following grounds;
 - a. That the Appellant was served by the Respondent a Notice of Taxation dated 13th October, 2023 and Defendant’s Party to Party Bill of Costs dated 26th September, 2023.
 - b. That the aforesaid taxation proceedings emanate from the ruling delivered by Hon. Justice P. M Njoroge, in the Environment and Land Court at Isiolo Civil Appeal No. E002 of 2022 on 5th December, 2022.



- c. That being dissatisfied with the entire ruling of the Honourable Justice P. M Njoroge, the Appellant appealed against the said ruling at the Court of Appeal of Kenya at Nyeri Civil Appeal No. COACA/167/2022.
 - d. That the costs awarded to the Respondent arise from the aforesaid ruling and its consequential orders are being appealed against at the Court of Appeal.
 - e. That the appeal case at the Court of Appeal is yet to be determined and not yet concluded.
 - f. This Honourable Court ought to allow the appeal to proceed as a matter of right and costs ought not to be taxed until the appeal is determined.
 - g. That payment of any bill of costs ought to be paid together after determination of the Court of Appeal and taxation can still be done and paid through the Court of Appeal's decision.
 - h. That in event the Respondent proceeds to tax and execute the same against the Appellant and the later (sic) succeeds in the appeal, the Appellant will end up losing.
 - i. That the Appellant's appeal at the Court of Appeal and order sought therein are meritorious and has a high chance of success.
 - j. That in the event the appeal succeeds and costs are awarded to the Appellant the Respondent will be subjected to pay the costs.
 - k. That the Respondent will not suffer any prejudice if the orders sought herein are granted as the respondent is in possession of the suit property and earns monthly rent.
 - l. That the Appellant is seriously aggrieved by the aforesaid ruling of which she has appealed against and she shall suffer loss if the orders sought herein are not granted.
 - m. That it is in the interest of justice that orders sought herein be granted.
3. The application was canvassed by way of written submissions.
 4. A conspectus of the appellant's submissions is that as there is an appeal in the court of appeal there should be a stay of execution of the ruling delivered by this court on 5th December, 2022 pending hearing and determination of the appeal filed by the appellant at the court of Appeal. The appellant also seeks an order for stay of the apposite taxation proceedings.
 5. The respondent has opposed the application and says that the appellant has not demonstrated that she would suffer substantive loss if an order of stay is not granted and more so because at all times when proceedings concerning this suit have been taking place, the respondent has been in occupation of the suit land.
 6. The respondent also states that this application has been made with unreasonable delay because the impugned ruling was delivered on 5th December, 2022 and this application was filed on 25th October, 2023, over 10 months later.
 7. The respondent says that the application ought to be dismissed because the appellant has not made any commitment to pay security for costs as required by Order 42 Rule 6 of the *Procedure Rules*.
 8. I have carefully considered the pleadings and the submissions proffered by the parties to buttress their diametrically incongruent assertions. I agree that the appellant has not made any commitment to deposit with court security for costs. Nevertheless Order 42 Rule 6 does not expressly require a commitment by the appellant to deposit with court security for costs.



The court, however, is required to order that a deposit for security of costs should it be inclined to grant and order for stay.

I note that the appellant filed a Notice of Appeal on 14/12/2022 well within the statutorily stipulated time for filing an appeal. I also note that the respondent is still in occupation of the suit land and continues to derive an income from it. I therefore find that granting the orders sought by the appellant will not unduly inconvenience the respondent but the appellant must deposit with court adequate security for costs as required by the applicable law.

9. Just in passing, I wish to point out that all the authorities cited by the parties to support their assertions are good authorities in their facts and circumstances.

I however opine that a court of law must consider the totality of the circumstances of each case and decide accordingly as cases are not congruent to a degree of mathematical exactitude in their facts and circumstances.

10. In the circumstances, this court issues the following orders:

- a. Prayers 1 and 2 in the application are granted Provided That the appellant shall deposit with court within 21 days of delivery of this ruling a sum of Kshs. 500,000/= as security for costs Failing which the stay granted for prayer 1 and 2 in the application Shall automatically lapse.
- b. Costs shall abide the eventual outcome.

DELIVERED IN OPEN COURT AT ISIOLO THIS 22ND DAY OF APRIL, 2024 IN THE PRESENCE OF:

Court assistant: Balozi/Rahma

Parties and Advocates not in court.

HON. JUSTICE P.M NJOROGE

JUDGE

