



REPUBLIC OF KENYA



**Aloo & another v Okoth (Environment and Land Appeal
E004 of 2022) [2024] KEELC 4379 (KLR) (30 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4379 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
ENVIRONMENT AND LAND APPEAL E004 OF 2022**

E ASATI, J

MAY 30, 2024

BETWEEN

ALOIS JUMA ALOO 1ST APPELLANT

JULIA AKETCH ROMBO 2ND APPELLANT

AND

RUTH ATIENO OKOTH RESPONDENT

RULING

1. This ruling is in respect of the Amended Notice of Motion application dated 25th October 2023 stated to be brought pursuant to the provision of Section 1A, 1B and 3A of the [Civil Procedures Rules](#) 2010. The application seeks for orders that:
 - a. The court be pleased to set aside the order issued on 20th September 2023.
 - b. The Appeal be reinstated to hearing
 - c. The court be pleased to stay execution and any further proceedings in Nyando ELC No. 23 of 2018 pending hearing and determination of the appeal.
 - d. Costs of the application be provided for.
2. The grounds upon which the application is brought as shown on the face of the application are that the appellants filed a suit against the Respondent namely; NyandoPMC ELC NO. 23 of 2018 in which judgment was delivered in favour of the Respondent on 18th January 2022 and being aggrieved with the judgment, the appellants preferred the appeal herein. That on 18/5/2023 the court made an order that record of appeal be filed without 45 days failing which the appeal could stand dismissed. That the record of appeal was filed but outside the 45 days granted upon which the appeal was dismissed on 20th September 2023 in accordance with the order made on 18/5/2023. That the delay in filing the record of appeal was occasioned by delay in receiving copies of proceedings. That the appeal raised triable



issues and has high chances of success. That the application has been filed without delay and that no prejudice shall be occasioned to the Respondent if the orders sought are granted.

3. The application was supported by the contents of the Supporting Affidavit sworn by the 2nd Applicant on 13th October 2023 and the annexure thereto.
4. The application was opposed vide the contents of the Replying Affidavit sworn by Ruth Atieno Okoyi the Respondent on 5th December 2023. The Respondent opposed the application on the grounds that the application for stay of execution had already been allowed by the trial court that the applicant failed to meet the timelines set by the court for filing the record of appeal and that the application was brought after unreasonable delay.
5. The application was argued by way of written submissions. On behalf of the applicant written submissions dated 19th September 2023 were filed by the firm of M.O.A. Advocates while on behalf of the Respondent, written submissions dated 29th January 2023 were filed by the firm of Olel Onyango, Ingutya Advocates.
6. I have considered the application, the contents of the Replying Affidavit and the rival submissions filed. The appeal herein was dismissed for failure of the applicant to file record of appeal within the time given by the court. Record of appeal dated 12th September 2023 was filed but out of the given timelines. I have seen on record a receipt dated 17/2/2022 for Ksh 1000/= being deposit for request for copies of proceedings (letter) and a letter dated 15/2/2022, requesting for proceedings received in court on 15/2/2022. There is nothing on record to show that the proceedings were ever typed certified and released to the applicant. In the circumstances of this case namely; that the delay in filing the record was occasioned by delay in supply of typed and certified proceedings, secondly that the appellant has filed the record of appeal although without the certified proceedings and in view of the right to fair hearing, I hereby find that the application has merit and allow it as follows:-
 - i. The order of this court made on 20th September 2023 dismissing the appeal is hereby set aside.
 - ii. The appeal is reinstated to hearing.

There be stay of execution of the judgement and stay of further proceedings in Nyando PMC Elc No.23 of 2018 pending hearing and determination of the appeal herein on condition that the applicant deposits Kshs.100,000/ as security in an interest earning account in the names of Counsel on record for the appellants and Counsel on record for the Respondent within 45 days hereof failing which the order of stay granted herein shall lapse.
 - iv. Costs of the application are awarded to the Respondent.

Orders accordingly.

RULING DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 30TH DAY OF MAY, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI,

JUDGE

In the presence of

Maureen – Court Assistant

Omondi T. for the Applicant.

No appearance for the Respondent.

