



**Mkwachu v Mbogho (Environment and Land Appeal E002 of 2024)
[2024] KEELC 4070 (KLR) (Environment and Land) (22 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4070 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT VOI
ENVIRONMENT AND LAND
ENVIRONMENT AND LAND APPEAL E002 OF 2024**

EK WABWOTO, J

MAY 22, 2024

BETWEEN

PATRICK MWANDANGO MKWACHU APPELLANT

AND

GEORGE MWAVISWA MBOGHO DEFENDANT

(Being an Appeal from the judgment of Hon. T.N. Sinkiyian, Principal Magistrate on 15th January 2024 in Voi CM ELC No. E002 of 2024)

RULING

1. The Appellant has moved this court vide an application dated 14th February 2024 seeking orders staying the judgment delivered by Hon. Sinkiyian, Principal Magistrate on 15th January 2024 in respect to Voi CM ELC No. 14 of 2020.
2. The application is premised on the grounds on the face of it and further supported by the Affidavit of Patrick Mwandango Mkwachu sworn on 14th February 2024. The Appellant deponed that he was dissatisfied with the decision of the trial court and has since filed an appeal. It was averred that the judgment delivered by the trial court gave a grace period of 90 days wherein the Respondent may be at liberty to execute and that he seeks court's protection against the said execution. He also averred that if the said orders are not granted, his appeal will be rendered nugatory. During the plenary hearing of the application Learned Counsel Mwazighe added that the 90 days period have lapsed and the court needs to consider granting the orders sought in the application.
3. The application was opposed by the Respondent vide a Replying Affidavit sworn on 17th April 2024. It was averred that the application is made in bad faith and meant to deny him the fruits of his judgment. It was also averred that the applicant has not satisfied the conditions for stay. The appeal has no chances of success and the applicant has not demonstrated what substantial loss he will suffer if stay of execution



is not granted. It was also averred that the application has been made after an unreasonable delay. The court was urged to dismiss the application.

4. Having considered the application, the affidavits in support and in opposition, and submissions made, the issue for determination is whether the orders sought by the applicant herein are merited.
5. As per the provisions of Order 42 rule 6 of the *Civil Procedure Code*, the Appellant is required to satisfy all the requirements set out therein to be entitled to orders of stay of execution. The requirements as per the above provision are threefold: whether there is sufficient cause; whether there is likelihood of substantial loss and whether security for the due performance of the decree has been provided.
6. In the instant application, judgment was delivered on 15th January 2024 and the appellant filed a Memorandum of Appeal on 14th February 2024. The Appellant came to court within the time allowed. I have also perused the Memorandum of Appeal and it is my considered opinion that it raises arguable issues.
7. On substantial loss, the Appellant avers that he will be evicted from the property anytime since the 90 days have already lapsed.
8. The court has perused the affidavits filed by the parties. No party annexed any evidence of the intended eviction and or execution of the decree issued by the trial court, however since the Appeal has already been filed which the court is seized of the same and the same raises triable issues, it is only prudent that the suit property be preserved pending the hearing and determination of the Appeal.
9. Section 13(7) (a) of the *Environment and Land Court Act*, 2015 (2011) abundantly provides for this Court's mandate to grant interim preservation orders.
10. *Practice Direction Number 32 of the Environment and Land Court Practice Directions*, 2014 provides:

“During interpartes hearing of any interlocutory application, where appropriate, parties are encouraged to maintain status quo----- after considering the nature of the case or hearing both sides the judge shall exercise discretion to order for status quo pending the hearing and determination of the suit keeping in mind the overriding interests of justice.”
11. Consequently, the following orders are issued in respect to the application dated 14th February 2024;
 - i. Pending the hearing and determination of this Appeal the parties are hereby directed to maintain the prevailing status quo in respect to the suit property at the time of this Ruling.
 - ii. The costs of the application shall be in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED IN OPEN COURT AT VOI THIS 22ND DAY OF MAY 2024.

E. K. WABWOTO

JUDGE

In the presence of:-

Mr. Mwzighe for the Appellant.

N/A for the Respondent.

Court Assistants: Mary Ngoira.

