



**Magambo & another v Abdi (Environment and Land Appeal  
003 of 2021) [2024] KEELC 3961 (KLR) (20 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3961 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL 003 OF 2021**

**PM NJOROGE, J**

**MAY 20, 2024**

**BETWEEN**

**ERASTUS KAARIA MAGAMBO ..... 1<sup>ST</sup> APPELLANT**

**FUGICHA ADAN ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ABDIKADIR ABDI ..... RESPONDENT**

**RULING**

1. This application is dated 20<sup>th</sup> December, 2023 and seeks orders;
  1. That this application be certified urgent and be heard ex-parte in the first instance and appropriate orders and/or directions be made accordingly.
  2. That pending the inter parties hearing and determination of this application this Honourable Court be pleased to stay execution of the Order of the trial court issued on 21<sup>st</sup> November, 2023 wherein warrants of arrest were issued against the Applicant herein.
  3. That pending the hearing and determination of this Appeal this Honourable Court be pleased to stay execution of the Order of the trial court issued on 21<sup>st</sup> November, 2023 wherein warrants of arrest were issued against the application herein.
  4. That the cost of this application be provided.
2. The application is supported by the affidavit of Erastus Kaaria Magambo, the applicant and has the following grounds;
  1. That the Applicant filed an application dated 3<sup>rd</sup> October, 2023 in the trial court (Isiolo MCELC/43/2005) challenging the manner in which warrants of arrest had been obtained against him through dishonesty on the part of the 2<sup>nd</sup> Respondent.



2. That when the matter came up for mention on 21<sup>st</sup> November, 2023 the trial court declined to hear and/or issue directions on the Appellant's Application above mentioned and instead dismissed the same and issued warrants of arrest against the Appellant herein.
  3. That the Appellant's Application dated 3<sup>rd</sup> October, 2023 raises issues touching on the Appellant's right of fair hearing and access to justice, but the said Application was not heard on merits thus the Appellant was condemned unheard, the reason for the instant appeal.
  4. That it is necessary that this Honourable Court stays the execution of the warrants of arrest issued against the Appellant on the 21<sup>st</sup> November, 2023 pending the hearing and determination of the Application inter-parties and subsequently the Appeal herein.
  5. That the applicant has a strong and arguable Appeal and craves for audience before the court so that he can have his day in court.
  6. That no prejudice will be occasioned to the Respondents if this application is allowed.
3. The Appellant's Advocate submits that the appeal is arguable and is not a frivolous one. He says that the appeal will be rendered nugatory if the orders sought are not granted. He adds that his application has met the threshold for granting the order of stay of execution pending appeal and, therefore, prays that this application be allowed.
  4. The Respondent's Advocate has opposed the application through grounds of opposition which take the following format;
    1. That the substantive Appeal herein was dismissed on 22/11/2021 for non-compliance with court Orders and also in terms of Section 79B of the Civil Procedure Act thus this Honourable Court is currently ex-officio.
    2. That the applicant has never applied for reinstatement of the substantive appeal herein.
    3. That any party who is aggrieved by any decision of this Honourable Court should lodge an appeal in the Court of Appeal.
    4. That any appeal against any subsequent orders of the trial court cannot be lodged within this matter which had already been dismissed and file closed.
    5. That the party namely Fugicha Adan is actually the Applicant's Co-Appellant and not a Respondent as indicated by the Applicant in his second Memorandum of Appeal filed on 20/12/2013.
    6. That the present appeal is scandalous, vexatious and an abuse of Court process thus deserving the fate of dismissal with costs.
  5. I have carefully considered the pleadings filed by the parties. The applicant seems to argue his case as if there is an existing appeal in this matter. This is not the case. The Intended appeal was dismissed by this court on 22/11/2021. It is clear that the dismissal was not appealed against. This being the case, this court has no basis to grant the orders sought by the applicant.
  6. I am in agreement in toto with the grounds of opposition dated 28<sup>th</sup> February, 2024 filed by the respondent's advocate.
  7. In the circumstances, this court issues the following orders;
    - a. This application is dismissed.



b. Costs shall follow the event and are awarded to the respondent.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 20TH DAY OF MAY, 2024**

In the presence of:

Court assistant: Balozi/Rahma

Miss Nyasani holding brief for Ouma for the Respondent.

Caleb Mwiti holding brief for Maheni for the Appellant/Applicant

**HON. JUSTICE P.M NJOROGE**

**JUDGE**

