



REPUBLIC OF KENYA



KENYA LAW
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**Kasena v Katsole & 2 others (Environment and Land Appeal
E034 of 2024) [2025] KEELC 762 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 762 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ENVIRONMENT AND LAND APPEAL E034 OF 2024
FM NJOROGE, J
FEBRUARY 20, 2025**

BETWEEN

MENZA KASENA APPELLANT

AND

MUMBA KATSOLE 1ST RESPONDENT

CHARO KATSOLE NGODOWE 2ND RESPONDENT

NGALA KATSOLE NGODOWE 3RD RESPONDENT

RULING

1. On 16/8/2024, the appellant, acting in person, approached this court seeking orders of stay of execution of judgment and decree pending appeal. At the orders of this court issued on 17/8/2024 he complied and amended his motion to reflect the number of the case that he was appealing from. The amended motion dated 20/8/2024 has now come up for hearing and determination before this court.
2. The application is premised on the grounds set forth in the Notice of Motion and the appellant's Supporting Affidavit sworn on 16/8/24 and the supplementary affidavit sworn on 20/8/2024 and the further affidavit dated 29/1/2025. The grounds are that there were certain mishaps that occurred between the appellant and his erstwhile advocate, including non-communication of certain aspects of the case, that the appeal has overwhelming chances of success and that if the stay sought is not granted the appeal may be rendered nugatory.
3. That background to the present application for stay of execution is that the appellant impugns a judgment of in an appeal that has already been filed before this court. That decision arose in a case filed at Kaloleni Senior Principal Magistrate's Court being Kaloleni ELC Case No E006 in which the appellant was plaintiff and the respondents defendants. In that case, the appellant claimed that he was the legal and beneficial owner of the suit land known as Kaloleni/Chalani /202. His narrative was that his father died and his mother was inherited by the grandfather to the respondents. He claimed that



- the respondents intend to evict him from the suit land which he claims is ancestral to him. He further stated that the respondents have their own land elsewhere where their father had built himself a house, and that the respondents have never resided on the suit land.
4. That the foregoing notwithstanding the respondents listed the suit property as one of their father's assets and therefore the plaintiff may be evicted any time by virtue of the effects of the succession cause. The appellant sought a declaration that the suit land belongs to him and an injunction against the respondent. He also sought an order that the Land Registrar do strike off the names of the respondents or their deceased father from the land register and substitute them/it with his name.
 5. The 1st respondent filed a Replying Affidavit which he, with the authority of the other two respondents, swore on 7/10/2024 raising the objection that the application at hand ought to have been raised before the trial court below so as to allow for trial of issues to commence at the lowest point of jurisdiction before proceeding to another appellate level, and I understand that to mean that they are invoking the doctrine of exhaustion. Further it is stated that the threshold for the grant of the stay orders has not been attained as the appellant lacks registered title to the suit land, and that none can be established in the present appellate proceedings, which militates against the grant of a stay order.
 6. It was deponed that the land had been subject of adjudication process and all its statutory mechanisms for ascertaining interests in land, and that the appellant never lodged any claim that he was entitled to the land; instead, he let the respondents' father register the land in his name. However, in this court's considered view, these are matters of merit into which the court can not delve into at the present interlocutory stage.
 7. I have noted that the Record of Appeal has been filed and that the lower court record has been availed. The appeal was filed long ago, on 16/8/2024, and it is the opinion of this court that since it is ready for directions and hearing, it ought to be heard straight away and that means that the application before me has to be dispensed with.
 8. Consequently, the court now disposes of this application by issuing the following orders:
 - a. The current status quo regarding the suit land on the ground and on the land titles register at the land registry shall be preserved as it is pending the hearing and determination of the present appeal;
 - b. The parties shall appear for a mention before this court on 11/3/2025 for the purpose of issuance of directions as to hearing.

DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 20TH DAY OF FEBRUARY 2025.

MWANGI NJOROGE

JUDGE, ELC, MALINDI

