



REPUBLIC OF KENYA



Mwango & 2 others v Maonga & another (Environment and Land Appeal E011 of 2024) [2025] KEELC 785 (KLR) (20 February 2025) (Ruling)

Neutral citation: [2025] KEELC 785 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT AND LAND APPEAL E011 OF 2024**

YM ANGIMA, J

FEBRUARY 20, 2025

BETWEEN

VINCENT MWANGO 1ST APPELLANT

DAVID MBARU 2ND APPELLANT

SAID SWALE 3RD APPELLANT

AND

ALBERT MAONGA 1ST RESPONDENT

COUNTY GOVERNMENT OF MOMBASA 2ND RESPONDENT

RULING

1. The material on record shows that vide a notice of motion dated 22.04.2024 the appellant sought, inter alia, leave to lodge an appeal out of time against the ruling and order of the trial court dated 27.11.2023 and a stay of execution of the said order pending appeal. It would appear that the order sought to be stayed was an order dismissing the appellant's application for review of a judgment entered against him on 21.02.2023.
2. The record further shows that vide a ruling dated 30.10.2024 this court (N.A. Matheka J) found that the intended appeal was not an arguable one and that there was inordinate delay in filing it which delay was not satisfactorily explained. As a result, the court dismissed the said application with costs to the respondent.
3. Being aggrieved by the said dismissal the appellant filed a notice of motion dated 14.11.2024 expressed to be brought under Sections 3, 3A, & 63(e) of the *Civil Procedure Act* (Cap 21), Order 42 rule 6, Order 50 (6), Order 51 rule 1 of the Civil Procedure Rules and all other enabling provisions of the law seeking a stay of execution of the order dated 30.10.2024 dismissing his application dated 22.04.2024.



4. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the appellant on 14.11.2024. The appellant contended that he was aggrieved by the order dated 30.10.2024 which he intended to challenge on appeal. He further contended that there was an imminent threat of execution which may render his appeal nugatory. It was his case that the application was filed without unreasonable delay and that he was willing to abide by any conditions the court impose upon granting the stay.
5. The respondent had not filed any response to the said application despite being granted 10 days to do so on 05.02.2025. There is also no indication of the respondent having filed any written submissions by the time of preparation of the ruling.
6. When the application came up for directions the appellant relied entirely upon his supporting affidavit and the grounds set out on the face of his motion and prayed for the order of stay to be granted.
7. It is evident from the material on record that the appellant is aggrieved by the ruling and order dated 30.10.2024 dismissing his application dated 22.04.2024. There is no doubt that the said order was a negative order which merely dismissed the appellant's application seeking, inter alia, leave to appeal out of time and a stay of execution. The court did not order any of the parties to do or refrain from doing any act or thing by its ruling dated 30.10.2024. The court takes the view that there is nothing to be stayed in the circumstances. See *Western College of Arts and Applied Science vs E. P. Oranga & 3 Others* (1976) KECA 15 (KLR).
8. The upshot of the foregoing is that the court finds no merit in the appellant's notice of motion dated 14.11.2024. As a result, the same is hereby dismissed with no order as to costs.

It is so ordered.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 20TH DAY OF FEBRUARY, 2025.

In the presence of:

Appellant in person

No appearance for the Respondent

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Y. M. ANGIMA

JUDGE

