



**Lorkoyo & another v Lorkoyo (Environment and Land Appeal  
E002 of 2024) [2024] KEELC 5548 (KLR) (24 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5548 (KLR)

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

**CG MBOGO, J**

**JULY 24, 2024**

**BETWEEN**

**RAKETA OLE LORKOYO ..... 1<sup>ST</sup> APPELLANT**

**MUSANA OLE KORKOYO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**JACKSON OLE LORKOYO ..... RESPONDENT**

**RULING**

1. Before this court for determination is the notice of motion dated 11<sup>th</sup> March, 2024 filed by the appellants/ applicants, and it is expressed to be brought under Order 51 and Order 42 Rule 6 of the [Civil Procedure Rules](#) and Section 3A,1A and 1B of the [Civil Procedure Act](#), seeking the following orders: -
  1. Spent.
  2. That there be a stay of further proceedings in Narok Chief Magistrates' Court ELC No. E109 of 2019 pending the hearing and determination of this application.
  3. That this honourable court be pleased to grant leave to the applicants/intended appellants to appeal to this honourable court against the entire order and ruling of Narok Chief Magistrates' Court ELC No. E109 of 2019 delivered on 16<sup>th</sup> February, 2024 by the Hon. P.L. Shinyada.
  4. That there be a stay of further proceedings in Narok Chief Magistrates' Court ELC No. E109 of 2019 pending the hearing and determination of the appellant's intended appeal.
  5. That the proceedings based on the ruling of 16<sup>th</sup> February, 2024 by the Hon. P.L. Shinyada finding the appellants in contempt be entirely set aside and the District Land Surveyor Narok North/ East/ West be directed to amend the RIM in respect of parcels nos. CisMara/



Empatipat/555 and 558 as recommended in the Land Registrar's report dated 16<sup>th</sup> December, 2020.

6. That the costs of this application be borne by the respondent in any event.
2. The application is premised on the grounds inter alia that the appellants/ applicants would suffer prejudice, and risk arrest having been ordered to pay Kshs. 30,000/- or serve six months jail term, rendering the appeal an academic exercise.
3. The application is supported by the affidavit of the 2<sup>nd</sup> appellant/applicant. The 2<sup>nd</sup> appellant/ applicant deposed that together with the 1<sup>st</sup> appellant/ applicant, they are dissatisfied with the ruling delivered on 16<sup>th</sup> February, 2024 by the Hon. P.L. Shinyada in Narok CMCC ELC No. E109 of 2019 which held that they are in contempt of the court orders owing to their occupation of the disputed parcels on the ground.
4. He further deposed that they intend to appeal against the said ruling, and that the said appeal has overwhelming chances of success owing to the fact that the trial magistrate grossly misapprehended the law and facts in arriving at the decision. The 2<sup>nd</sup> appellant/ applicant further deposed that on 30<sup>th</sup> October, 2020, the District Land Registrar and the District Surveyor visited the suit properties, and observed that the RIM does not conform with the occupation on the ground, and recommended that the District Land Surveyor to draw a mutation to amend the RIM. Further, he deposed that the District Land Registrar recommended that the ground occupied by each party be adopted and the said resolution has never been challenged.
5. The 2<sup>nd</sup> appellant/ applicant deposed that the trial court erred in finding them in contempt of the court orders without a District Land Registrar's and the Surveyor's report for the reason that his activities are confined to parcel no. CisMara/ Empatipat/ 558. That as a result, they stand to be condemned to pay costs of Kshs. 30,000/- or serve six months jail term which he knows that as a fact, they have not willingly disobeyed the orders of the court.
6. In response to the application, the respondent filed his replying affidavit sworn on 31<sup>st</sup> May, 2024. The respondent deposed that the appellants/ applicants were found in contempt of court orders, and the penalties imposed are lawful and just given their willful disobedience of the court's orders. He deposed that the appellants/ applicants have not provided sufficient grounds to warrant stay of proceedings and does not meet the threshold of sufficient cause provided under Order 42 Rule 6 of the [Civil Procedure Rules](#).
7. The respondent deposed that the said ruling was properly obtained, extracted and served upon the contemnor on 19<sup>th</sup> February, 2024. That despite the said service, the appellants have continued to carry out activities on parcel CisMara/ Empatipat/ 555, which is his parcel of land in defiance of the court orders issued on 18<sup>th</sup> August, 2023. Further, he deposed that the Land Registrar's report dated 6<sup>th</sup> December, 2020 does not negate the fact that they have violated the orders by occupying his land. He also deposed that the orders issued by the court were clear and the appellants/applicants were made aware of the same. It was deposed the appellants/applicants are underserving of the orders sought since the court issued the said not once or twice, but they have in all cases acted contrary to the same.
8. The respondent deposed that granting a stay of proceedings would embolden the appellants/ applicants to continue disobeying court orders and infringe upon his property rights at the same time derail the trial court on substantive determination of the case before it.
9. The application was canvassed by way of written submissions. The respondent filed his written submissions dated 12<sup>th</sup> July, 2024 where he raised two issues for determination as follows: -



1. Whether the appellants' application for a stay of proceedings meets the threshold of 'sufficient cause' under Order 42 Rule 6 of the [Civil Procedure Rules](#).
  2. Whether the appeal has likelihood of success.
10. On the first issue and while relying on the case of [James Wangalwa & Another versus Agnes Naliaka Cheseto](#) [2012] eKLR, the respondent submitted that the court should not base the exercise of its discretion under Order 42 Rule 6 of the [Civil Procedure Rules](#) only on the chances of the success of the appeal as much more is needed. It was further submitted that the appellants/ applicants have not demonstrated that the monetary penalty would lead to irreparable financial harm, and that the same does not amount to substantial harm but rather a lawful exercise meant to punish contemnors. Further, it was submitted that upholding this court's decision reinforces the authority of the judiciary, and maintains public confidence in the legal system. The respondent submitted that the issues concerning ownership and compliance with the court's orders can be addressed in the substantive hearing and it is not right for the appellants/ applicants to poison the court's mind by introducing the skewed narration on facts which form the basis of the substantive case.
11. On the second issue, the respondent submitted that the trial court's decision was based on a thorough evaluation of evidence and law, and for this reason, the orders of the court must be obeyed. Reliance was placed in the case of [Econet Wireless Kenya Limited v Minister for Information and Communications of Kenya & Another](#) [2005] eKLR.
12. By the time of writing this ruling, the appellants/ applicants had not filed their written submissions. Be that as it may, I have considered the application, the replying affidavit and the written submissions filed by the respondent. I am of the view that the issue for determination is whether this court should grant stay of further proceedings in Narok CMCC ELC Case No. E109 of 2019.
13. Order 42 Rule 6(1) of the [Civil Procedure Rules](#) which provides:
- “No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.”
14. In the case of [Kenya Wildlife Service v James Mutembei](#) [2019] eKLR Gikonyo, J held that:
- “Stay of proceedings should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore, the test for stay of proceeding is high and stringent”.
15. Further, in the case of [Global Tours & Travels Limited](#); Nairobi HC Winding up Cause No. 43 of 2000 Ringera, J (as he then was) stated that: -
- “As I understand the law, whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of judicial discretion to be exercised in the



interest of justice .... the sole question is whether it is in the interest of justice to order a stay of proceedings and if it is, on what terms it should be granted. In deciding whether to order a stay, the court should essentially weigh the pros and cons of granting or not granting the order. And in considering those matters, it should bear in mind such factors as the need for expeditious disposal of cases, the prima facie merits of the intended appeal, in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought expeditiously.”

16. From the above authorities, it is clear that stay of proceedings is a grave matter to be entertained only in the most exceptional cases as it impedes on the right to expeditious trial. Such exercise of power although discretionary, ought to be approached with maximum caution while taking into consideration the interests of both parties.
17. In the instant case, the appellants argued that the purpose of the application is to safeguard the rights of the appellants to appeal against the decision, and the appeal if necessary, is not rendered an exercise in futility. In applying the provisions of Order 42 Rule 6 of the Civil Procedure Rules as well as the authorities above to this case, the appellants/ applicants argued that they are dissatisfied with the said ruling delivered by the trial court delivered on 16<sup>th</sup> February, 2024 and they intend to appeal.
18. In deciding whether or not to grant stay of proceedings as sought in this application, this court needs to be satisfied that the appellants/ applicants, have established an arguable case, whether the instant application was filed expeditiously, and whether there is sufficient cause to satisfy the court to exercise its discretion.
19. Upon careful perusal of the application, I note that the appellants/ applicants have delved into issues that would best form the basis of the appeal as opposed to stay. They have made reference to the contents of the ruling, and the Land Registrar’s report. The only argument advanced is that they risk arrest and jail term of six months if they do not pay Kshs. 30,000/- which was ordered by the court.
20. Whereas the appellants/ applicants have a right to appeal against a decision which they are dissatisfied, I do not find the same as a bar to further proceedings of the matter before the trial court. The reasons adduced are not compelling and the circumstances are not exceptional to warrant the intervention of this court.
21. As such, the order commending itself for issuance is the prayer number 3 only of the said application which this court proceeds to grant. This court declines to grant prayer 4 and 5 of the notice of motion dated 11<sup>th</sup> March, 2024. Costs in the cause. Orders accordingly.

**DATED, SIGNED & DELIVERED VIA EMAIL THIS 24<sup>TH</sup> DAY OF JULY, 2024.**

**HON. MBOGO C.G.**

**JUDGE**

24/07/2024.

In the presence of: -

Mr. Meyoki Pere – C. A

