



**Seperiani v Seitai (Land Case Appeal E005 of 2024)
[2025] KEELC 781 (KLR) (20 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 781 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KILGORIS
LAND CASE APPEAL E005 OF 2024
MN MWANYALE, J
FEBRUARY 20, 2025**

BETWEEN

BENJAMIN LEMASHON SEPERIANI APPLICANT

AND

DANIEL LESHAN SEITAI RESPONDENT

RULING

1. On 18.11.2024, this court (Washe J) dismissed this appeal against the Judgment of Hon. C.W Waswa, Senior Resident Magistrate delivered on 11.12.2003 in Kilgoris CME and L No. E001 of 2020.
2. Aggrieved by the said dismissal, the Appellant filed an appeal before the Court of Appeal and the application dated 19.11.2024 seeking stay of execution of the judgment and orders this court (Washe J) delivered on 18.1.2024; together with all consequential orders and in particular order No. 8 (b), (c) and (d) of the Honourable Trial Magistrate judgment delivered on 29th February 2004 in Kilgoris Environment and Land.
3. This Ruling is in respect of that Application and shall also dispose off another application dated 24th January 2025, similarly seeking stay of execution orders seeing that prayer 3 of the application dated 24th January 2025 seeks stay of execution pending the hearing and determination of the intended appeal to the court of appeal which prayer is similar to prayer 3 of the application subject.
4. Parties were directed to file written submissions on the application, which they did and the court having considered the submissions, frames the determination as follows: -
 - i. Whether or not the application is merited?



Analysis and Determination

5. The appeal against decision of Hon. C.W Waswa SRM was dismissed. A dismissal is a negative order but can a stay of execution issue against a negative order?
6. This question arose and was determined by the Court of Appeal In the case of Gitundu vs. Wathuku Civil Application (E024 OF 2021) 2022 KELA KLR 26 August 2022 where at paragraph 10 the learned Judges stated as follows: -

“ Additionally, even if he had the requisite jurisdiction, this court has said time without number that stay orders cannot issue in respect of negative orders, where the court has not ordered any of the parties to perform any task.”
7. In view of the said legal position, the Application before court lacks merit and both Applications dated 19.11.2024 and 25.01.2025 are both dismissed with costs.
8. For avoidance of doubt, the appeal against the judgment and decree of Hon. C.W Waswa having been dismissed, the said judgment is valid and the decree holder is at liberty to execute the same if he so desires. The court further notes that the Appellant Benjamin Lemashon Seperiani through his Counsel Mr. Bigogo has filed three stay of execution applications two of which have been dismissed by this ruling and one is pending before the Court of Appeal and expresses its disappointment with the conduct of the litigant and his counsel on record as filing of numerous applications seeking similar reliefs is an abuse of the court process.
9. The Appellant / Applicant shall bear the cost of this application and the dismissed appeal in any event as already ordered while Mr. Bigogo counsel on record shall bear the costs of the application dated 24th January 2025 personally and/ or his firm.

DATED AND DELIVERED AT KILGORIS THIS 20TH DAY FEBRUARY OF 2025

HON. M.N. MWANYALE

JUDGE

In the presence of:

C/A Emmanuel/Sylvia

Mr. Bigogo for the Appellant/Applicant

Mr. Ochwangi for the Respondent

