



**Peroh v Peroh & 3 others (Environment & Land Case
89 of 2019) [2024] KEELC 5510 (KLR) (17 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5510 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 89 OF 2019
MN GICHERU, J
JULY 17, 2024**

BETWEEN

MICHAEL PEROH PLAINTIFF

AND

ISHMAEL MOSHI PEROH 1ST DEFENDANT

WINFRED MUKAI PEROH 2ND DEFENDANT

ISAAC PEROH 3RD DEFENDANT

STEPHEN PEROH 4TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 30/11/2023. The motion which is by the plaintiff seeks one residual order which is as follows.
3. That the court be pleased to grant an order of stay of execution of the judgment delivered on 28/11/2023 and make an order that the status quo be maintained concerning the suit property namely L.R. B409 formerly known as Plot No. 65/Residential situated within Ongata Rongai Trading Centre as at 28/11/2023, specifically with respect to the state, collection of rent and management of the suit property, pending the filing of the intended appeal.
The motion is brought under Sections 13 (2), 7 (a), 16, 19 (1) of the *Environment and Land Court Act*, 1A, 1B, 3A, 63 (c) of the *Civil Appeal Act*, Orders 51 rule 1, 40 rules 1 and 10, 42 rule 6 of the *Civil Procedure Rules* and all other enabling provisions of the law.
2. The motion is based on eleven grounds and is supported by an affidavit sworn by Michael Peroh dated 30/11/2023 which has four annexures. The gist of the above material is as follows. Firstly, the applicant sought to be declared the sole owner of the suit land but the court declared that it is owned by the applicant and the respondents jointly. Secondly, at the interlocutory stage, the court had ordered that



rental income from the suit property be deposited in a joint bank account in the names of the advocates for the parties. Thirdly, the applicant, being dissatisfied with the judgment of this court commenced the process of appeal to the Court of Appeal. Fourthly, in the absence of the order that rental income be held in an account operated by advocates for both parties, the respondents may begin dealing with the suit property as they wish in a manner prejudicial to the applicant's interests. Fifthly, the order of maintenance of status quo will safeguard the substratum of the subject matter so that it is not so eroded or radically charged to the prejudice of one party.

For the above and other reasons, he prays for the order as above.

3. The motion is opposed by the respondents and the 3rd respondent Stephen Peroh has sworn a replying affidavit in which he responds as follows. Firstly, the application is an abuse of the court process and a blatant display of the applicants' incessant efforts to frustrate the respondents from enjoying the fruits of their labour and judgment dated 28/11/2023. Secondly, the application by the applicant is made in bad faith with the sole intention of denying the respondents access to their funds which they had not enjoyed for over 4 years. Thirdly, the applicant had access to 35.953% of the funds held in the joint account as a result of which he received Kshs. 8, 019, 01500 and the respondents too would also want to enjoy the fruits of their labour. Fourthly, the funds are far better invested that to remain dormant in the bank as has been the case since 2019. Since the applicant is not the sole investor and beneficiary of the suit assets he should let the respondents deal with their property as they wish. Fifthly, the respondents have no history of fraud and they should be left to continue doing what they have done best; to reinvest.

For the above and other reasons, they pray for the dismissal of the motion dated 30/11/2023. Counsel for the parties were to file written submissions by 30/4/2024. I did not see any such submissions and I have written this ruling without the benefit of the counsels' input.

4. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit together with the annexures as well as the replying affidavit. I have also perused the record Under Section 42 Rule 6(2) of the *Civil Procedure Rules*, no order of stay of execution shall be made unless the applicant satisfies the following conditions.
 - a. Prove that substantial loss may result if the order is not made and the application has been made without unreasonable delay, and, such security as the court orders for the due performance of the decree or other orders as may ultimately be binding on him has been given by the applicantIn this case, I find that the following issues arise.
 - i. Whether substantial loss may result if the order sought is not granted.
 - ii. Whether the application has been made without undue delay.
 - iii. Whether the applicant has given any security for the due performance of any decree that may be made on appeal.

5. On the first issue, I find that the applicant has not proved that he will suffer substantial loss if the order of stay is not allowed. The applicant is assured of his undisputed contribution towards the project. He stands to lose nothing at all more so because the respondents are honest and straightforward people who have a good record of investment in real property. As for the second issue, I find that the application has been made without undue delay because it was made within two (2) days of the judgment dated 28/11/2023.

Finally, on the third issue, I find that the applicant has not made any offer of security for the due performance of the decree that may be made in the appeal. There is no guarantee that the applicant will ever be able to compensate the respondents for the loss that they may suffer if they do not invest



their resources as planned. Since the three conditions are conjunctive not disjunctive, the application fails because the applicant has satisfied only one out of three. For the application to succeed, he needs to satisfy all the three. The upshot is that the motion dated 30/11/2023 is dismissed with costs.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 17TH DAY OF JULY 2024.

M.N. GICHERU

JUDGE

