



REPUBLIC OF KENYA



**KENYA LAW**  
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**KIplagat v Oira (Environment & Land Case 38 of 2012)  
[2024] KEELC 7290 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7290 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT & LAND CASE 38 OF 2012  
A OMBWAYO, J  
OCTOBER 31, 2024**

**BETWEEN**

**LAWI KIGEN KIPLAGAT ..... PLAINTIFF**

**AND**

**THOMAS RATEMO OIRA ..... DEFENDANT**

**RULING**

1. The judgment debtor Lawi Kigen Kiplagat has applied for a stay of execution of judgment dated on 14th March 2024 out of time and that there be a say of execution pending appeal. The application is based on the grounds that the Judgment was delivered in the matter herein on 14th March, 2024 finding that the Plaintiff had failed to prove his claim and therefore not entitled to the orders sought. The premise of the suit was dispute over land ownership with the Plaintiff claiming that he did indeed enter into an agreement for the sale of plot no 34, Miti Mingi Settlement Scheme no 722, at a consideration of Kshs.7.600,000/= where he only received 10% of the same with the Defendant defrauding him of the suit property and similarly breaching and frustrating the contract.
2. The right to protect property is enshrined under article 40 of *the Constitution* of Kenya 2010 and the Plaintiff herein has every right to protect his property and therefore we seek stay in order to protect the interest of the Plaintiff/Applicant.
3. The counsel on record sought instant stay of execution of the said judgment and the same was granted on proviso that a formal Application requesting the same be filed in Court within 15 days thereof, which has since lapsed and the same should be determined urgent.
4. The applicant argues that the execution of the said judgment will dispose of the suit property that is the subject matter in the appeal making prosecution of the appeal a futile exercise. The Applicants are willing to abide by any conditions set by this Honorable court including a deposit of security. The applicant contends that it is in the interest of natural justice that the Applicants be granted an



opportunity to prosecute their appeal without the threat of execution hanging over their heads like a noose. This Honorable court has discretion to issue orders for stay in favour of the Applicants and that the application has been brought without undue delay on the part of the Applicants. The supporting affidavit reiterates the grounds of the application. The application is dated 9th May 2024. The application is opposed by the defendant. The application is opposed by the defendant. Order 42 Rule 6 of the Civil Procedure Rules, 2010 specifies the circumstances under which the court may order Stay of Execution of a Decree or Order pending an Appeal. It provides that an Applicant must demonstrate the following:-

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- a. Substantial loss may result to the applicant unless the order was made;
  - b. The application was made without unreasonable delay; and
  - c. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
5. I have considered the application and the replying affidavit and would not like to belabor on the same because the judgment delivered by the court was negative. There cannot be substantial loss in a negative judgment. The defendant did not have a counterclaim and therefore there is no positive order against the plaintiff to stay.
6. I am guided by the Court of Appeal decision in the case of Kaushik Panchamatia & 3
7. Others...Vs...Prime Bank Limited & Another [2020]eKLR. As the Court reiterated and which I fully adopt, that;
- “...that a negative order is incapable of being stayed because there is nothing to stay. It therefore, follows that in light of the above threshold we have no mandate to grant a stay order in the manner prayed for by applicants.”
8. Similarly, in the case of Western College Farts and Applied Sciences...Vs... Oranga & Others [1976]KLR 63, the Court whilst considering whether an Order of Stay can be granted in respect of a negative order and which we fully adopt stated inter alia as follows:-
- “But what is there to be executed under the judgment, the subject of the intended appeal the High Court has merely dismissed the suit with costs. An execution can only be in respect of costs.....” The High Court has not ordered any of the parties to do anything or to refrain from doing anything or to pay any sum. There is nothing arising out of the High Court Judgment for this court in an application for stay to enforce or restrain by injunction.”
9. The suit was dismissed with costs therefore there is nothing to be stayed. The court can only stay a positive order but not a negative order. The court cannot stay a dismissal of the suit. The application is dismissed with costs because it is misconceived.

**SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO**

**THE JUDICIARY OF KENYA.**

**NAKURU ENVIRONMENT AND LAND COURT**

**ENVIRONMENT AND LAND COURT**



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