



REPUBLIC OF KENYA



**Odembo v Kache & 2 others (Environment and Land Appeal
7 of 2023) [2024] KEELC 7249 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7249 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL 7 OF 2023
MD MWANGI, J
OCTOBER 31, 2024**

BETWEEN

CELYNE ODEMBO APPELLANT

AND

VIVIAN KACHE 1ST RESPONDENT

JIMLY PROPERTIES LIMITED 2ND RESPONDENT

**IRENE KIRAGU T/A JANICE INVESTMENT AUCTIONEER 3RD
RESPONDENT**

(In respect of the application dated 23rd October 2023 seeking stay of execution pending appeal)

RULING

Background

1. The application dated 23rd October 2023 is brought under the provisions of Order 42, rule 6 of the Civil Procedure Rules. It seeks stay of execution/sale of the Applicant's goods attached on 29th October 2023 pursuant to orders issued by the Rent Restriction Tribunal pending hearing and determination of the appeal.
2. The Respondents' tacit response to the application by the Appellant is that it is overtaken by events as the distrained goods were already sold on 16th October, 2023, long before the application for stay was filed in court. The Respondents attached the evidence of sale of the goods in their replying affidavit. They further pointed out that the Applicant has indeed lodged a complaint before the Auctioneers Licensing Board premised on the fact of the sale of the distrained goods by the Auctioneers.
3. While acknowledging that the distrained goods were sold, the Appellant/Applicant averred that Section 8 of the Auctioneers Rules places responsibility on the Auctioneer for the attached/distrained goods until they are sold. The goods must be sold in a lawful manner. Since there was no compliance



with the law, the Appellant insists that the Auctioneer remains responsible and liable. The orders sought for stay of execution according to the Appellant therefore remain relevant.

Issues for Determination.

4. Having carefully considered the application by the Appellant, the response by the Respondents and the oral submissions by Counsel for the Applicant and Counsel for the Respondents, the sole issue for determination is whether the application by the Appellant is moot.

Determination.

5. From my reading of the response by the Respondents to the Appellant's application and the Appellant's further affidavit, as well as the oral submissions by Counsel for the parties, it is not in dispute that the distrained goods, which the Appellant sought to prevent from being sold through an order of stay of execution had already been sold by the time of filing of the application under consideration. The essence of the Appellant's application as clearly spelt out in the grounds on the face of it was to prevent the sale of the goods, which she termed as household goods.
6. The question that begs for an answer then is whether the Appellant's application is of any practical significance.
7. The Court of Appeal in the case of Okiya Omutatah Okoiti & 2 others –vs- A.G. & 4 others (2020) eKLR, while citing with approval the case of Daniel Kaminja and 3 others (Suing as Westlands Environment Caretaker Group) vs County Government of Nairobi 2019 eKLR, stated that,

“A matter is moot if further legal proceedings with regard to it have no effect, or events have placed it beyond the reach of the law. Thereby, the matter has been deprived of practical significance or rendered purely academic. Mootness arises when there is no longer an actual controversy between the parties to a court case and any ruling by the court would have no actual practical impact. No court of law will knowingly act in vain....a suit is academic where it is merely theoretical, makes empty sound and is of no practical utilitarian value to the plaintiff even if judgment is given in his favor.”
8. Considering that what the Appellant seeks to prevent by an order of stay of execution has already happened, the court can only arrive at one conclusion; that the Appellant's application is moot. Granting the order of stay of execution will be an academic exercise.
9. Further considering that the Appellant has already moved to the Auctioneer's Licensing Board, on the issue of the unlawful sale of her household goods, this court is obligated to respect the hierarchy of the judicial system of this country and allow that statutory forum to perform its statutory mandate.
10. The upshot is that the Appellant's application dated 23rd October 2023 is dismissed. Considering that the Appellant/Applicant did not have the advantage of legal counsel at the time of filing the application I will make no orders as to costs of the application.

It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 31ST DAY OF OCTOBER 2024.

M.D. MWANGI

JUDGE

In the virtual presence of:



Mr. Kanyi Ngatia h/b for Mr. Ndurumo for the Respondents

N/A by the Appellant/Applicant

M.D. MWANGI

JUDGE

