



REPUBLIC OF KENYA



KENYA LAW
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**Pete v Kidiga (Land Case Appeal E057 of 2024)
[2024] KEELC 7273 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7273 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISUMU
LAND CASE APPEAL E057 OF 2024**

E ASATI, J

OCTOBER 31, 2024

BETWEEN

PETER OTIENO PETE APPELLANT

AND

GEORGE AOL KIDIGA RESPONDENT

*(Being an appeal from the decision of the District Land
Registrar (NICHOLAS A. OBIERO) dated 20th June 2024)*

RULING

1. This ruling is in respect of the Notice of Motion application dated 30th July, 2024. It seeks for orders that there be stay of proceedings in Kisumu CM ELC Case No. E100 of 2024 pending hearing and determination of the Appeal herein.
2. The grounds upon which the application was made are that the Land Registrar's decision which is the subject of the appeal came to the Applicant's attention when he was served with pleadings in KISUMU CM ELC E100 OF 2024.
3. That the Applicant being aggrieved by the decision of the Land Registrar dated 20/6/2024 has appealed against the said decision. That the Respondent does not stand to be prejudiced if the orders sought are granted.
4. The application was supported by the averments in the Supporting Affidavit sworn by the Applicant on 30th July, 2024 and the Supplementary Affidavit sworn by the Applicant on 10th September, 2024.
5. The application was opposed vide the grounds of opposition contained in the Replying Affidavit sworn by the Respondent on 19th August, 2024. It was argued on behalf of the Respondent that there is no valid application before court as the appeal on which it is premised was filed out of time. That Regulation 40(6) provides that the appeal must be filed within 30 days of the date of the decision.



Secondly, that no nexus had been established between the decision of the Land Registrar which is the subject of the appeal and the suit whose proceedings are sought to be stayed.

6. It was the Applicant's case that the case No. KISUMU MC ELC. No. E100 of 2024 is based on the decision of the Land Registrar which decision. That the Respondent is seeking conservatory orders in the suit on the basis of the decision of the Land Registrar.
7. The applicant also contends that the appeal was filed in time as the 30 days provided for in Regulation 40(6) start to run from the date of notification of the decision by the Land Registrar.
8. I have considered the application, the contents of the Replying Affidavit, Supplementary Affidavit and the oral submissions made.
9. On whether or not the appeal is filed out of time, regulation 40(6) of the Land Registration (General) Regulations 2017 provides that: -

“any party aggrieved by the decision of the Land Registrar made under paragraph 5 may within 30 days of notification appeal the decision to the court.”
10. It is therefore true as submitted on behalf of the applicant that time for filing of the appeal starts to run from the date of notification of the Land Registrar's decision. In this case that date has not been disclosed to the court. The applicant's case is that he got to learn of the decision when he was served with the pleadings in the suit. It is therefore not possible to determine at this stage whether the appeal was filed out of time or not.
11. On the issue of whether there is a nexus between the decision of the Land Registrar and the suit, I have perused the annexures to the Affidavits filed by the applicant. The decision of the Land Registrar is not among them. Although the applicant claims that the Respondent is relying on the said decision to seek conservatory orders, there is no evidence placed before court to that effect.
12. As held by the High Court in Kenya Wildlife Service Vs James Mutembei (2019) eKLR,

“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”.
13. I find that the application has not demonstrated sufficient ground to warrant the orders sought. The application lacks merit. The application is hereby dismissed. Costs to the Respondent. I urge the applicant to expedite hearing and disposal of the appeal.

Orders accordingly.

RULING, DATED AND SIGNED AT KISUMU, READ VIRTUALLY THIS 31ST DAY OF OCTOBER, 2024 THROUGH MICROSOFT TEAMS ONLINE APPLICATION.

E. ASATI

JUDGE.

In the presence of:

Maureen: Court Assistant.

Okello for the Appellant/Applicant



Okal for the Respondent.

