



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kosiom v Matura (Environment and Land Appeal E005 of 2024)  
[2024] KEELC 7030 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7030 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E005 OF 2024  
LC KOMINGOI, J  
OCTOBER 24, 2024**

**BETWEEN**

**BEATRICE TUMUTI KOSIOM ..... APPLICANT**

**AND**

**SOLOMON KUNTAI OLE MATURA ..... RESPONDENT**

**RULING**

1. This is the Notice of Motion dated 26<sup>th</sup> February 2024 brought under; (Section 1S, 1B, 3, 3A and 63 (e) of the *Civil Procedure Act*, Order 42 Rule 6 of the Civil Procedure Rules and all other enabling provisions of the Law)
2. It seeks Orders;
  1. Spent.
  2. That this Honourable Court be pleased to grant the applicant/appellant temporary stay of execution of judgment delivered on 15<sup>th</sup> February 2024 pending the hearing inter-parties of the application and thereafter pending the hearing and determination of this Appeal.
  3. That the costs of this application be provided for.
3. The grounds are on the face of the application and are set out at paragraphs 1 to 13.
4. The Application is supported by the affidavit of Beatrice Tumuti Kosiom the Appellant/Applicant, sworn on the 26<sup>th</sup> February 2024.
5. The Application is opposed.  
There is a Replying Affidavit sworn by Solomon Kuntai Ole Matura, the Respondent, sworn on the 19<sup>th</sup> March 2024.



6. On the 9<sup>th</sup> April 2024, the court with the consent of parties directed that the Notice of Motion be canvassed by way of written submissions.

7. The Appellant's submissions are dated 15<sup>th</sup> April 2024. They raise one issue for determination; whether this Honourable court should grant stay of execution pending Appeal.

Counsel cited order 42 rule 6 of the Civil Procedure Rules 2010 and submitted that the Application has been filed without undue delay.

8. Counsel also submitted that this court must determine whether not granting the order will occasion substantial loss to the Applicant. He has put forward the cases of James Wangalwa & Another Vs. Agnes Naliaka Cheseto (2012) eKLR; COI & Another Vs. Chief Magistrate Ukunda Law Courts & 4 Others (2018) eKLR.

9. It is further submitted that the purpose of stay of execution is to preserve the subject matter in dispute while balancing the interests of the parties and considering the circumstances of the case. He has put forward the case of RWW Vs. EKW (2019) eKLR.

10. It is submitted that the Appellant is ready and willing to furnish such reasonable security as this Honourable court may deem fit. He has put forward the case of Vishram Ravji Halai Vs. Thornton & Turpin (1990) KLR 365.

Further that the Respondent is a person of straw and will not be able to pay the Applicant for the loss and damages that would be occasioned to her land if he is allowed to execute and the appeal thereafter succeeds.

She prays that the Application be allowed.

11. The Respondent's submissions are dated 21<sup>st</sup> May 2024. It is submitted that the law applicable to the sale agreement dated 25<sup>th</sup> January 2003 is the law existing before the amendment to Section 3(3) of the *Law of Contract Act*. The same recognized the equitable doctrine of part performance which permitted a party who had performed the act of part performance to bring an action under an unwritten agreement but had to prove taking possession of the property or being already in possession continues in possession in part performance of the Contract and if a party has done some other action in furtherance of the contract.

He has put forward the case of Nairobi Permanent Markets Society Vs. Salim Enterprises & Others (1995 – 1998) 1 EA 232.

12. It is also submitted that the Appellant did not avail any witness to dispute the Respondents occupation of the nine acres of the suit land.

Further that the Respondent has attached photographs of his permanent matrimonial home in the list of documents. He prays that the Application be dismissed with costs.

### **Analysis and Determination.**

13. I have considered the Notice of Motion, the affidavits in support, the response thereto, the rival submissions and the authorities cited. The issue for determination is whether the Notice of Motion is merited.

14. It is not in dispute that the Respondent is in possession of the suit property after having purchased from the Defendant. He has constructed home in which he resides.



15. I find that the Appellant has failed to demonstrate that she will suffer substantial loss if these orders are not granted.

I rely on the case of RWW Vs. EKW (2019) eKLR where the court stated;

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safe guarded and the appeal if successful, is not rendered nugatory. However in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgement. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

16. I also find the Appellant has failed to demonstrate that the appeal has high chances of success and that the Respondent would not be able to compensate her should she succeed on appeal.
17. In conclusion I find no merit in this Application and the same is dismissed. The costs do abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 24<sup>TH</sup> DAY OF OCTOBER 2024.**

**L. KOMINGOI**

**JUDGE.**

In the Presence of:

Mr. E.K. Njagi for the Appellant.

Mr. Taliti for the Respondent.

Court Assistant – Mutisya.

