



Kiptanui & another (Both Suing as the Administrators of the Estate of the Late Abraham Kiptanui) v Ruto (Environment & Land Case 356 of 2016) [2025] KEELC 502 (KLR) (13 February 2025) (Ruling)

Neutral citation: [2025] KEELC 502 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT & LAND CASE 356 OF 2016
EO OBAGA, J
FEBRUARY 13, 2025**

BETWEEN

MARY JERUTO KIPTANUI 1ST PLAINTIFF

PATRICK KIPLAGAT KIPTANUI 2ND PLAINTIFF

**BOTH SUING AS THE ADMINISTRATORS OF THE ESTATE OF THE LATE
ABRAHAM KIPTANUI**

AND

JENIFFER CHEPKEMBOI RUTO DEFENDANT

RULING

1. This is a ruling in respect of a Notice of Motion dated 17th May, 2024 in which the Plaintiffs/Applicants seeks the following orders:
 - i. Spent
 - ii. Spent
 - iii. There be stay of the judgement of this Honourable Court entered on the 16th May, 2024 and the resultant decree pending the hearing and determination of the Applicants' intended appeal.
 - iv. The Applicants be at liberty to apply for further orders and/or directions as the Honourable court may deem just to grant.
2. The Applicants contend that this court delivered a judgment on 16th May, 2024 in which it dismissed the Plaintiffs' suit with costs to the Defendant/Respondent. They state that they have been in possession of the suit property since 1990 and that before the delivery of the judgment, there were various orders which restrained the Respondent from interfering with the property. These orders were automatically



vacated and that the Respondent will illegally evict them from the suit property which will render the Appeal an academic exercise.

3. The Applicants state that they will suffer substantial loss should they be evicted and that they are ready to offer any security as the court may order.
4. The Applicants' application was opposed by the Respondent based on a replying affidavit sworn on 14th September, 2024. The Respondent contends that the issues which are being raised in the application were dealt with in the judgment of 16th May, 2024. The Respondent states that she is entitled to enjoy the fruits of the judgement and that the filing of the appeal is to prolong this litigation which ought to come to an end.
5. The Respondent further states that the Plaintiffs were given ample time to move out of the suit property which they have been occupying illegally but have failed to do so.
6. In a further affidavit filed by the Applicants they state that they have a right to seek a second opinion from the Court of Appeal and that there should be stay pending the hearing and determination of the appeal before the Court of Appeal.
7. The parties were directed to file written submissions . The Applicants filed their submissions dated 18th October, 2024. The Applicants submitted they had fulfilled the conditions provided under Order 42 Rule 6 of the Civil Procedure Rules. They relied on the decision in Sarah N. Sakwa -Vs- Elizabeth Wamwanyi t/a Namukhosi Limited and another (2017) eKLR where the court cited with approval the case of James Wangalwa & another Vs Agnes Naliaka Cheseto [2013] eKLR where it was held as follows:

“The Applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as the successful party in the appeal. This is what substantial loss would entail.....”

8. The court in Sarah N. Sakwa (Supra) further stated:

“The right of appeal is a Constitutional right that actualize the right to access to justice, protection and benefit of the law, whose essential substance, encapsulates that the appeal should not be rendered nugatory for anything that renders the appeal nugatory impinges on the very right of appeal.”

9. The Applicants further relied on the case of Tassam Logistics Limited -vs- David Macharia & another (2018) eKLR where the court in granting orders for stay of execution pending appeal relied on the case of Kenya Commercial Bank Limited -vs- Sun City Properties Ltd & 5 others (2012) eKLR where it was held:

“In an application for stay, there are always two competing interests that must be considered. These are that a successful litigant should not be denied the fruits of the judgment and that an unsuccessful litigant exercising his undoubted right of appeal should be safeguarded from his appeal being rendered nugatory. These two competing interests should always be balanced.”

10. The Applicants submitted that in a bid to balance the two competing interest, the courts usually make an order for suitable security for the due performance of the decree as parties wait for the outcome of the appeal. Reliance was placed on the case of Tabro Transporters Ltd -vs- Absalom Dova Lumbasi



(2012) eKLR where the requirement to furnish security was considered as the first thing to do when balancing the two competing interests.

11. The Respondent filed her submissions dated 24th October, 2024. She submitted that the Applicants have not satisfied the conditions set out under Order 42 Rule (6) of the Civil Procedure Rules. She relied on the case of Kenya Commercial Bank (Supra) and submitted that the title to the suit property is in the name of her deceased husband and that the Applicants are illegally occupying the same.
12. The Respondent further submitted that as the suit was filed against her before she obtained letters of Administration in respect of the Estate of her late husband, there is nothing to stay. She relied on the case of Veronica Njoki Wakagoto (deceased) (2013) eKLR where the court held as follows:

“The effect of Section 45is that the property of a dead person cannot be lawfully be dealt with by anybody unless such a person is authorised to do so by the law. Such authority emanates from a grant of representation and any person who handles estate property without authority is guilty of intermeddling. The law takes a very serious view of intermeddling and makes it a criminal offence.”

13. I have considered the Applicants’ application, the opposition to the same by the Respondent, the submissions of the parties and the cases relied on. There is only one issue for determination. This is whether the Applicants have demonstrated that they are entitled to orders of stay of execution.
14. To begin with, it is important to note that the Applicants’ suit was dismissed with costs. This was therefore a negative order which is incapable of being stayed. The only execution will be on costs. The Applicants have not stated that if they pay costs, they will not get it back in case they succeed in the appeal.
15. Even if for argument’s sake the court were to consider the conditions set out under Order 42 Rule 6, the Applicants have not demonstrated what substantial loss they will suffer in case no stay is granted. If the Applicants succeed in the Court of Appeal, the title to the suit property would simply change from the name of the Respondent’s husband to their name. The appeal will not therefore be rendered nugatory. For these reasons, I find that the Applicants’ application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

**RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS AT MAKUENI THIS
13TH DAY OF FEBRUARY, 2025.**

In the presence of:

Mr. Wesanza for Mr. Mayende for applicant.

