



**Ndatani Enterprises Company Ltd & another v Railway Housing Co-operative Society Ltd  
(Environment & Land Case 224 of 2009) [2024] KEELC 7003 (KLR) (17 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7003 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 224 OF 2009  
LN MBUGUA, J  
OCTOBER 17, 2024**

**BETWEEN**

**NDATANI ENTERPRISES COMPANY LTD ..... 1<sup>ST</sup> PLAINTIFF**

**TAITA CONSULTANTS COMPANY LTD ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**RAILWAY HOUSING CO-OPERATIVE SOCIETY LTD ..... DEFENDANT**

**RULING**

1. Before me is an application dated 20<sup>th</sup> June 2024 brought forth by the plaintiffs seeking orders for stay of the ruling dated 24<sup>th</sup> April 2024 and all the consequential orders including the notice to show cause pending the hearing and determination of the intended appeal. The application is premised on grounds on the face of the application as well as on the supporting affidavit of Alexander Muema Muthengi. He avers that he has filed an application in the case E293 of 2024 in the Court of Appeal seeking leave to file a notice of appeal as well as a memorandum of Appeal out of time. He contends that his application has high chances of success, hence the ruling of 24<sup>th</sup> April 2024 as well as the Notice to Show Cause should be stayed.
2. The respondents opposed the application through the replying affidavit of their treasurer, one Aggrey Ogutu dated 4<sup>th</sup> August 2024. He contends that after the ruling of 24<sup>th</sup> April 2024, the applicants have forwarded to them 124 title deeds for transfer of the same to the purchasers. That in the circumstances, there is no need of a stay of execution. He further contends that the intended appeal is for the sole purpose of delaying this matter from coming to an end, yet the matter has been in court for the last 15 years.



3. I have considered all the issues raised herein. The legal regime governing the issue of stay is anchored under Order 42 rule 6 the Civil Procedure Rules. In the case of Feisal Amin Jan Mohammed T/A Dunyia Forwarders vs Shami Trading Co. Ltd (2014) eKLR, the court stated that;

“It is trite law therefore that a stay of execution order is generally granted if the applicant has successfully demonstrated that substantial loss may result to him unless the order is made, that the application was made without unreasonable delay and that the applicant has offered proper security”.

4. In the case at hand, the ruling sought to be challenged was delivered way back on 24.4.2024 where Alexander Muema was found to be in contempt of court. No reasonable explanation has been proffered as to why the application was only filed 2 months later in June this year. In that regard, and considering the age of this matter, I decline to grant the orders sought. The application dated June 20, 2024 is hereby dismissed with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 17<sup>th</sup> DAY OF OCTOBER 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

In the presence of:

Khaminwa, Catherine, Osoro and Omondi for Plaintiff

M/s Gideon for Defendant

Court Assistant: Joan/Vena

