



REPUBLIC OF KENYA



KENYA LAW
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**Mumia v Koech & 3 others (Environment & Land Case 70 of 2018 & 351 of 2022
(Consolidated)) [2025] KEELC 554 (KLR) (13 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 554 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT & LAND CASE 70 OF 2018 & 351 OF 2022 (CONSOLIDATED)
DO OHUNGO, J
FEBRUARY 13, 2025**

BETWEEN

FRANCIS MASINDE MUMIA APPLICANT

AND

JOSEPH KOECH 1ST RESPONDENT

**JOSHUA KIPKEMBOI CHEPSIOROR (SUED AS LEGAL REPRESENTATIVES OF
THE ESTATE OF THE LATE CHEBSIOROR ARAP KOKO) 2ND RESPONDENT**

DINAH C CHEPSIOROR 3RD RESPONDENT

SALI KOGO 4TH RESPONDENT

RULING

1. Judgment was delivered in these consolidated cases on 30th April 2024 as follows:
 - a. Francis Masinde Mumia's (the applicant's) suit in ELCC No. 70 of 2018 is dismissed.
 - b. Francis Masinde Mumia (the applicant) to vacate the parcel of land known as Kakamega/Sango/131 within 60 (sixty) days from the date of delivery of this judgment. In default, an eviction order shall issue.
 - c. A permanent injunction is hereby issued restraining Francis Masinde Mumia (the applicant) from cultivating, occupying, interfering with, alienating or in any other way dealt with the parcel of land known as Kakamega/Sango/131.
 - d. Dinah C. Chepsioror and Seli Kogo (the plaintiffs in ELCC No. 351 of 2022) shall have costs of the consolidated suit and interest thereon.



2. Subsequently, Francis Masinde Mumia (the Applicant) filed Notice of Motion dated 12th August 2024, which is the subject of this ruling. The application was drawn and filed on behalf of the Applicant by the firm of Mukabane & Kagunza Advocates LLP and seeks the following orders:
 1. That service of this application be dispensed with in the first instance.
 2. That there be a stay of execution of the judgment/decree in Kakamega ELC No. 70 of 2018 as consolidated with 351 of 2018 - Francis Masinde Mumia v Joseph Koech (Acting as the personal representative of the estate of the late Chepsiror Arap Kogo – deceased) & 3 Others pending the hearing and determination of this application in the first instance.
 3. That there be a stay of execution of the judgment/decree in Kakamega ELC No. E070 of 2018 - Francis Masinde Mumia v Joseph Koech (Actin as the personal representative of the estate of the late Chepsiror Arap Kogo – deceased) & 3 Others pending the hearing and determination of an intended appeal to the Court of Appeal.
 4. That the costs of this application be provided for.
3. The application is supported by an affidavit sworn by Francis Masinde Mumia (the Applicant). He deposed that he filed Notice of Appeal against the judgment and applied for certified proceedings. He annexed copies of a Notice of Appeal and a letter requesting for certified proceedings and added that his appeal will be rendered nugatory.
4. The Respondents opposed the application through a Replying Affidavit sworn by Joshua Kipkemboi Chepsiror. He deposed that the affidavit in support of the application is unsworn and defective. I must however point out that the copy in the Court file was sworn on 12th August 2024, before a Commissioner for Oaths. Mr Chepsiror further deposed that the Applicant neither filed Notice of Appeal nor served it upon the Respondents’ Advocates and that the application was filed after unreasonable delay. He added that the Applicant remains in possession of the suit property in violation of the Court’s orders and that the application and the intended appeal are in bad faith. Mr Chepsiror also deposed that if the Court is inclined to grant stay, security in the sum of KShs 60,000,000 should be ordered.
5. The application was canvassed through written submissions. The Applicant filed submissions dated 14th October 2024 while the Respondents filed submissions dated 16th September 2024.
6. I have considered the application, the affidavits and the submissions. The sole issue for determination is whether stay of execution pending appeal should be granted.
7. The jurisdiction to grant stay of execution pending appeal is circumscribed by Order 42 rule 6 of the Civil Procedure Rules, 2010. In summary, a litigant seeking stay pending appeal must demonstrate that he has filed a Notice of Appeal, that substantial loss will result to him if stay is not granted, and that the application has been made without unreasonable delay. Such a litigant is also required to give such security as the court may order for the due performance of the decree. See *Kenya Power & Lighting Co. Ltd v Kigaita Ngare Unduthu & 36 others* [2020] eKLR and *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR. As Platt Ag JA (as he then was) stated in *Kenya Shell Limited v Benjamin Karuga Kibiru & another*, substantial loss is the corner stone of the jurisdiction to grant stay of execution pending appeal. It is virtually impossible for such an application to succeed if an applicant fails to demonstrate that he will suffer substantial loss if stay is not granted.
8. The Respondents have contended that the Applicant did not file any Notice of Appeal. The judgment sought to be appealed against was delivered on 30th April 2024. Pursuant to Order 42 rule 6 (4) of the



Civil Procedure Rules and Rule 77 (2) of the Court of Appeal Rules, Notice of Appeal was to be lodged within fourteen days of delivery of the judgment, that is, by the end of the day on 14th May 2024. The Applicant annexed a copy of a Notice of Appeal dated 10th May 2024. It does not however have any evidence of actual filing in court. No court fees receipt was annexed. I have perused the Case Tracking System (CTS), and I see that a copy of it was uploaded on CTS on 15th May 2024 at 1723 hours but has never been paid for. In any case, a filing on 15th May 2024 would be contrary to the provisions of Rule 77 (2) of the Court of Appeal Rules, thereby necessitating an application for enlargement of time.

9. In view of the foregoing, I agree with the Respondents that there is no valid Notice of Appeal against the judgment. Stay of execution cannot issue in the absence of a valid appeal within the meaning of Order 42 rule 6 (4) of the Civil Procedure Rules.
10. Even if the Applicant had surmounted the requirement of having a valid appeal, he would still have to demonstrate that the application was filed without unreasonable delay. In the judgment delivered on 30th April 2024, the Applicant was given 60 (sixty) days within which to vacate the suit property. If he intended to appeal, he should have filed his application for stay long before expiry of the sixty days. The present application was filed on 14th August 2024, some 105 days after the date of delivery of the judgment and long after the sixty days window had closed. I consider that to be unreasonable delay. I agree with the Respondents that the Applicant is keen on unjustly prolonging his stay on the suit property.
11. In the result, I find no merit in Notice of Motion dated August 12, 2024 and I therefore dismiss it with costs to the Respondents.

DATED, SIGNED, AND DELIVERED THROUGH MICROSOFT TEAMS, AT NYAMIRA, THIS 13TH DAY OF FEBRUARY 2025.

D. O. OHUNGO

JUDGE

Delivered in the presence of:

Mr Kagunza for the Applicant

Ms Sang for the Respondents

Court Assistant: B Kerubo

