



**Jomo Kenyatta University of Agriculture & Technology v Kwanza Estates Limited (Environment and Land Appeal E026 of 2023) [2024] KEELC 13461 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13461 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E026 OF 2023  
MAO ODENY, J  
NOVEMBER 21, 2024**

**BETWEEN**

**JOMO KENYATTA UNIVERSITY OF AGRICULTURE &  
TECHNOLOGY ..... APPELLANT**

**AND**

**KWANZA ESTATES LIMITED ..... RESPONDENT**

*(Being an Appeal from the Ruling and Orders of the Chief Magistrate's Court of Kenya at Nakuru (Hon. Elizabeth Juma, CM) made on 26th day of September 2023 in Nakuru Chief Magistrate's Court Environment and Land Case No. E939 of 2022)*

**RULING**

1. This ruling is in respect of a Notice of Motion dated 6<sup>th</sup> August, 2024 by the Applicant seeking the following orders:
  - a. Spent
  - b. Spent
  - c. Spent
  - d. After the said inter-partes hearing of this Application the Court be pleased to vary the Ruling (sic) a stay of execution of the Ruling and Orders of the Chief Magistrate's Court of Kenya at Nakuru (Hon. Elizabeth Juma, CM) made on 26<sup>th</sup> day of September 2023 in Nakuru Chief Magistrate's Court Environment and Land Case No E939 of 2022; Kwanza Estates Limited v Jomo Kenyatta University of Agriculture & Technology rendered on 26<sup>th</sup> September 2023 pending hearing and determination of the intended appeal.



- e. The Honourable Court be pleased to grant an extension of time for the lodging and service of a Record of Appeal against the Ruling and Orders of the Chief Magistrate’s Court of Kenya at Nakuru (Hon. Elizabeth Juma, CM) made on 26<sup>th</sup> day of September 2023 in Nakuru Chief Magistrate’s Court Environment and Land Case No E939 of 2022; Kwanza Estates Limited v Jomo Kenyatta University of Agriculture & Technology rendered on 26<sup>th</sup> September, 2023.
  - f. Spent
  - g. Spent
  - h. An appropriate order be made for costs of this Application.
2. The application was based on the grounds on the face of the motion and supported by the affidavit of Richard Wokabi Kariuki, the Chief Legal Officer of the Applicant dated 6<sup>th</sup> August, 2024 where he deponed that on or about 14<sup>th</sup> June 2024, the Applicant’s advocates on record attempted to file the Record of Appeal electronically through the Judiciary’s e-filing portal but were unable to do so because they were not linked to the matter.
  3. The Chief Legal Officer further stated that the Applicant’s counsel on record reached out to the Respondent’s counsel by way of a telephone and explained the challenges that the firm was facing in filing the Record of Appeal and counsel assured him that he would inform the Respondent of the said predicament and advise against taking adverse action against the Applicant.
  4. He also stated that the Applicant’s advocates wrote to the Respondent’s advocates on 15<sup>th</sup> July, 2024 seeking that the Respondent hold on taking any adverse action against the Applicant as they sought to have the filing issue resolved.
  5. It was the Applicant’s testimony that on or about 5<sup>th</sup> August, 2024, the Applicant was served with warrants of sale and attachment of movable property in execution of a decree for money dated 1<sup>st</sup> August, 2024 and proclamation notice for a sum of Kenya Shillings Twenty- Four Million Six Hundred and Eighteen Seven Hundred and Twenty-Nine and Three Cents (KES 24, 618,729.03). Further that the failure to abide by the terms of the conditional stay is not due to indolence of the Applicant or its advocates on record but rather a technical challenge emanating from the Judiciary e-filing portal.
  6. The Respondent opposed the application vide a Replying Affidavit sworn by Geoffrey Makana Asanyo, the Managing Director of the Respondent dated 9<sup>th</sup> September, 2024 where he deponed that the Applicant filed the Appeal herein on 27<sup>th</sup> October, 2023 as can be seen from Case Tracking System hence did not require to be mapped by the registry. He further stated that the Appellant’s advocate reached out to their advocate on record but no agreement was reached against taking adverse action given the fact that the timelines had expired and that the Appellant ought to have deposited half of the decretal sum by 15<sup>th</sup> July, 2024 in a joint interest account of counsel on record as ordered by the court.
  7. According to the Respondent, there is no reason that has been advanced to explain why the Applicant did not file an application for extension of time before 15<sup>th</sup> July, 2024 when the orders of stay of execution lapsed and why they had to wait until the execution process had begun.

### **Applicant’s Submissions**

8. Mr. Kinuthia, counsel for the Applicant filed submissions dated 24<sup>th</sup> September, 2024 and identified the following issues for determination:
  - a. Whether the Applicant is entitled to another order of stay of execution pending hearing and determination of the Appeal.



- b. Whether the Applicant is entitled to an order of extension of time to lodge and serve the Record of Appeal.
  - c. Whether the Court should award costs for this Application.
9. On the first issue, counsel submitted that the Applicant neither lodged the Record of Appeal within the timelines given by the Court, nor deposited the security for due performance of the Decree and consequently the stay order lapsed. Counsel submitted that at the time of filing the Memorandum of Appeal, the services offered through the Judiciary e-filing portal had not been rolled out to the Environment and Land Court in Nakuru. Counsel submitted that in as much as the portal shows that the Appeal was filed in October 2023, it was not until August this year that they were able to lodge any documents vide the portal.
  10. Mr. Kinuthia submitted that in the Ruling rendered on 15<sup>th</sup> May, 2024, the Court already found that the Applicant had satisfied the requirement for issuance of stay order. Counsel relied on Order 42 Rule 6 of the Civil Procedure Rules, Section 1A, 1B, 3A and 95 of the *Civil Procedure Act* and Article 159 (2) (d) of *the Constitution*. Counsel relied on the case of African Safari Club Limited vs Safe Rentals Limited [2010] eKLR.
  11. On the second issue, counsel relied on Order 50, Rule 5 of the Civil Procedure Rules, 2010 and the cases of Abdulhalim Mohammed Shallo & another vs Pandya Memorial Society T/A Pandya Memorial Hospital [2009] eKLR, Eldoret Steel Mills limited vs Patrick Lumumba Likono [2011] eKLR, Republic vs District Land Registrar Thika [2014] eKLR and Trust Bank Ltd vs Amalo Co Ltd [2003] 350 and urged the court to grant an order of extension of time to lodge and serve its Record of Appeal given the circumstances involved.
  12. It was counsel's submission that following the Court order issued on 8<sup>th</sup> August, 2024, they have since lodged the Record of Appeal and therefore the same can be deemed as being properly on record. On the third issue, Counsel submitted that each party should bear its own costs regardless of the outcome of the Application.

### **Respondent's Submissions**

13. Mr. Konosi, counsel for the Respondent filed submissions dated 8<sup>th</sup> November, 2024 and identified the following issues for determination:
  - a. Whether the Applicant should be granted another order of stay of execution pending the hearing and determination of the Appeal
  - b. Who should bear the costs of the application?
14. On the first issue, counsel submitted that the applicant's prayer No 4 is res judicata given the fact that this honourable court pronounced itself on the issue of stay by its ruling delivered on 15<sup>th</sup> May, 2024 and relied on the case of John Florence Maritime Services Limited & another vs Cabinet Secretary Transport & Infrastructure & 3 others (Petition 17 of 2015) [2021] KESC 39 (KLR) (Civ) (6 August 2021) (Judgment).
15. Mr. Konosi submitted that if the Applicant wanted to invoke the proper exercise of the court's discretion, the appropriate order which should have been sought is an order for the review and/or variation of the orders issued by this honourable court on 15<sup>th</sup> May, 2024. Counsel submitted that the Applicant has relied on the fact that it could not be able to file its Record of Appeal within the prescribed time because its advocates were not mapped on the e-filing portal which was a localized issue which should have been sorted out had its advocates been keen in following the matter seriously.



Counsel relied on the case of *Republic vs Chief of General Staff & Attorney General (Civil Appeal (Application) 19 of 2014)* [2017] KECA 524 (KLR) (Civ) (28 April 2017) (Judgment).

16. Counsel submitted that the Applicant has not explained the delay in filing the present application having realized that it had failed to comply with the first requirement of stay on 14<sup>th</sup> June, 2024 and relied on the case of *Nicholas Kiptoo Arap Korir Salat vs Independent Electoral and Boundaries Commission & 7 others* [2014] eKLR.
17. According to counsel the decretal sum is rising at a very high rate and as at 1<sup>st</sup> August, 2024, the decretal sum stood at Kshs 24,616,229.03/= and continues to attract interest at the rate of 5% per month until payment in full. Mr. Konosi submitted that this is a case ripe for dismissal. On the second issue, counsel submitted that the Applicant was the author of the situation it finds itself today and the costs of the application should be borne by the Applicant.

### **Analysis And Determination**

18. The issue that arises for determination is whether this court should issue an order of stay of execution and extend time for filing a record of Appeal. The court had issued the following orders on 15<sup>th</sup> May, 2024:
  - a. Stay of execution is hereby granted pending the hearing and determination of the Appeal.
  - b. The stay is conditional on the Appellant filing and serving the record of Appeal within 30 days from the date of the ruling failure to which the Appellant to deposit half of the decretal amount in joint interest earning account of counsel on record within 30 days as security for the due performance of the decree.
  - c. Failure to abide by the terms under (b), the stay shall lapse.
  - d. Costs of the application to abide by the outcome of the Appeal.
19. This court heard and determined an application for stay of execution, which was conditional upon filing and serving a record of Appeal within 30 days from the date of the ruling failure to which the order would lapse. Further that if the Applicant did not file the Appeal within the stipulated period then it would deposit 50% of the decretal sum.
20. Applicant neither lodged its Record of Appeal within the stipulated period nor did it deposit the security for the due performance of the decree. Hence the current application. The Applicant blamed the failure to not being mapped by the registry to the e-filing system. The Applicant stated that they communicated to the Counsel for the Respondent about the predicament and had assured them that they would not take any adverse action but counsel denied this.
21. Counsel for the Respondent submitted that the appropriate order that the Applicant should have applied for is for review/variation of the order dated 15<sup>th</sup> May 2024 and not a fresh order for stay of execution
22. I agree with counsel for the Respondent that an order of stay of execution had already been granted conditional and the applicant was supposed to abide by the specified timelines. No explanation has been given for the delay in filing the application. The Applicant waited until the time had lapsed to file the application for stay and extension of time.
23. However, I note that the issue of e filling has had its teething challenges, which the court may not ignore as we move to the new digital world. The Court has looked at the e-filing portal and noted that the Applicant has lodged its Record of Appeal. It is against this backdrop that I order in the interest



of justice to allow the Applicant to pursue the appeal as per the earlier order of stay that had been issued by this court. Applicant to serve the record of Appeal within 7 days. Applicant to pay costs of the Application.

**DATED, SIGNED AND DELIVERED AT NAKURU THIS 21<sup>ST</sup> DAY OF NOVEMBER 2024.**

**M. A. ODENY**

**JUDGE**

