



**Kobado & 3 others v Pristine Holdings Limited & 2 others (Appeal E014 of 2024) [2024] KEELC 14211 (KLR) (21 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 14211 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MIGORI  
APPEAL E014 OF 2024  
GMA ONGONDO, J  
NOVEMBER 21, 2024**

**BETWEEN**

**JOHN OWUOR KOBADO ..... 1<sup>ST</sup> APPLICANT  
ANDREW MWERA ..... 2<sup>ND</sup> APPLICANT  
SACK OGUTU ACHAR ..... 3<sup>RD</sup> APPLICANT  
WINNIE OGUTU OGOLLA ..... 4<sup>TH</sup> APPLICANT**

**AND**

**PRISTINE HOLDINGS LIMITED ..... 1<sup>ST</sup> RESPONDENT  
MIGORI COUNTY GOVERNMENT ..... 2<sup>ND</sup> RESPONDENT  
RONGO MUNICIPALITY BOARD ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. By a Notice of Motion application dated 5<sup>th</sup> July 2024 under, inter alia, Order 42 rule 6 (2) of the [Civil Procedure Rules 2010](#) and sections 1A and 3A of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya, the appellants/applicants through Nyamori Nyasimi and Company Advocates have sought the orders infra;
  - a. An order of stay of execution of the ruling and order of subordinate dated 25<sup>th</sup> June 2024 and 2<sup>nd</sup> July 2024 respectively by Hon. C.N.C Oruo (PM) IN Rongo PMCC ELC No. E028 of 2024 be and is hereby issued pending hearing and determination of appeal.
  - b. Costs of this application be abide determination of the appeal.
2. The application is founded upon the 1<sup>st</sup> applicant’s affidavit of nineteen paragraphs sworn on even date and the grounds on the face of it which include;



- a. The appeal raises triable issues that merit consideration and determination before this Honourable Court in view of the fact that the appellants were never parties in the suit before the trial court and were condemned unheard to either serve jail terms of up to 6 months or pay huge fines without being given a chance to be heard and defend themselves.
  - b. If an order of stay is not granted the appellants will suffer permanent irreparable loss and suffering since they will lose their fundamental freedoms and rights once imprisoned, in the event the appeal eventually succeeds.
3. The application is opposed by the 1st respondent through Odongo Okal and Company Advocates in the replying affidavit and further affidavit duly filed herein. It is averred in part that the 1<sup>st</sup> respondent approached the court on 15<sup>th</sup> May 2024 seeking temporary injunctive order against the 2<sup>nd</sup> and 3<sup>rd</sup> respondents from undertaking any development, activity, trespassing and or interfering with the 1<sup>st</sup> respondent's parcel of land known as Plot No. 20 Block B measuring 0.3 hectares in area. That on 17<sup>th</sup> May 2024, the trial court granted the temporary order and it was served as well as the applicants made aware of existence of the same. That however, the applicants wilfully and deliberately defied the said orders hence, they were held in contempt of court thereof.
  4. In a replying affidavit sworn on 22<sup>nd</sup> October 2024 by Benard Ogutu Apollo, the Director Lands , Housing , Physical Planning and Urban Development of the 2<sup>nd</sup> respondent, the application is not opposed by the 2<sup>nd</sup> and 3<sup>rd</sup> respondents. They averred, inter alia, that the standard of proof for contempt of court was never met by the 1<sup>st</sup> respondent in the original suit before the trial court as even personal service was not made on them.
  5. By the submissions dated 30<sup>th</sup> July 2024, learned counsel for the applicants stated that the applicants were not parties in the original suit, did not participate in it and merely summoned to court for contempt of court, among other things. That the applicants have satisfied the requirements under Order 42 Rule 6 (2) (*supra*), *Nicholas Stephen Okaka & another v Alfred Waga* [2020] KLR and *Ena Investment Limited v Benard Ochau Mose & 2 others* [2022] eKLR for the orders sought in the application.
  6. By the 1<sup>st</sup> respondents' submissions dated 3<sup>rd</sup> September 2024, reference is made to the application, the replying affidavits and that the applicants defied duly served temporary injunctive orders issued on 17<sup>th</sup> May 2024 by the trial court thus, contempt of court orders were validly issued against the applicants by that court. To buttress the submissions, counsel for the 1<sup>st</sup> respondent relied upon *Kenya Union of Post Primary Teachers & 3 others v Njeru Kanyamba* [2018] eKLR and *Felicity Mutete Mutula v Nairobi County Government* [2021] eKLR, among other authorities.
  7. By the submissions dated 22<sup>nd</sup> October 2024, learned counsel for the 2<sup>nd</sup> and 3<sup>rd</sup> respondents referred to the application and leave granted to them to file and serve their responses and submissions. It was submitted that Order 42 Rule 6 (2) (*supra*) provides for three conditions for the grant of the stay order sought in the application. Reliance was made on the guiding principles on issuance of stay of execution as outlined in *RWW v EKW* [2019] eKLR, the case of *Samuel M.N Mwaura & others v National Land Commission & 2 others* [2020] eKLR on contempt of court and other authorities. That the impugned order is prejudicial to the applicants who are not parties to the original suit thus, the prayers in the application be allowed accordingly.
  8. Having considered the entire application, all the affidavits and the parties' submissions including all the authoritative pronouncements cited therein, is the instant application meritorious?



9. Order 42 Rule 6 (supra) under which the application is originated, sets out the triple requirements for stay of execution namely substantial loss, delay and security for the due performance of decree or order in question. Regarding substantial loss, the nature of the orders sought in the application are likely to adversely affect the applicants. Pertaining to requirement of security, it is within the discretion of this court.
10. Further, on substantial loss, this appeal commenced by the memorandum of appeal dated 5<sup>th</sup> July 2024, contains triable issues. They touch on condemnation for contempt of court and violation of right to fair trial under Article 25 of the Constitution of Kenya 2010 which call for hearing of the appeal on merit. So, allowing stay of execution of the impugned orders, will ensure that the appeal is not prevented thereby.
11. In the case of Butt v Rent Restriction of Tribunal [1979] eKLR to which I subscribe, the Court of Appeal opened thus;  

.....the appellant has an undoubted right of appeal.....’
12. It must be noted that this court has the mandate to grant interim preservation orders under section 13 (7) (a) of the Environment and Land Court Act 2015 [2010]. It is the considered view of this court that stay of execution order sought in the application is included thereunder.
13. Furthermore, it is trite that the court has authority to issue orders for preservation, in the interim, of a subject matter of appeal; see Board of Governors Moi High School Kabarak & another v Malcom Bell [2013] eKLR.
14. As regards delay, it is notable that the trial court’s ruling was delivered on 25<sup>th</sup> June 2024. The application was generated 15 days thereafter hence, it does not suffer from unreasonable delay herein.
15. Sections 1A and 3A of the Civil Procedure Act Chapter 21 Laws of Kenya provide for inherent and special powers of this court to render orders in the ends of justice. The instant circumstances, dictate that the orders sought in the application be granted to meet the ends of justice.
16. Wherefore, this application is merited. The same be and is hereby allowed in terms of prayer number 2 for stay of execution as set out in paragraph 1(a) hereinabove.
17. Costs of the application to abide the outcome of this appeal.
18. It is so ordered

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

**G M A ONGONDO**

**JUDGE**

Nyamori Nyasimi learned counsel for appellants/applicants

Ngani instructed by Okal learned counsel for 1<sup>st</sup> respondent

David Otieno instructed by Jura learned counsel for 2<sup>nd</sup> and 3<sup>rd</sup> respondents

Tom Maurice, court assistant

