Samperu v Masarie (Land Case Appeal E038 of 2024)
[2025] KEELC 478 (KLR) (12 February 2025) (Ruling)

Neutral citation: [2025] KEELC 478 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT KILGORIS

LAND CASE APPEAL E038 OF 2024

MN MWANYALE, J

FEBRUARY 12, 2025

BETWEEN

SOIPEI OLE SAMPERU ..... APPLICANT

AND

NTOKOYUAN OLE MASARIE ..... RESPONDENT

RULING

1. This Ruling relates to the Notice of Motion Application dated 30.01.2025 which primarily seeks a stay of execution pending appeal.

2. The Application was certified as urgent when the same was filed and given an inter-parte date on 12.02.2025 at 8.30 am. The Application was to proceed by way of oral submissions.

3. When the matter called up at 8.40 am, Mr. Shira learned counsel for the Respondent pointed to the court that he had filed a preliminary objection to the Application and wished that the same be treated as a Response to the Application.

4. Mr. Migiro learned counsel h/b for Mr. Omwoyo for the Appellants/Applicants sought for time allocation to proceed with the Application and the matter was allocated 9.15am.

5. Hitherto Mr. Shira for the Respondent had pointed that his Preliminary Objection was based on the fact that a similar stay of execution Application was heard by the trial court and was pending delivery of a Ruling.

6. The court enquired from Mr. Migiro whether that was the position and Mr. Migiro indicated that he was to confirm from the instructing counsel and would address the court at the time the matter had been allocated.

7. At 9.40 am, the matter was called again, Mr. Migiro, learned counsel pointed that the Applicants/ Appellants had filed their written submissions on the Application which they intended to rely on

entirely, on the issue of whether there was a pending Application before the trial court seeking stay of execution orders, Mr. Migiro confirmed that there was indeed a pending ruling on a similar Application before the trial court, at which point the court reserve its ruling on the Application for delivery today at 2.30 pm, but the same was delivered earlier at 11.30 am with Notice to the parties.

8. The gist of the Preliminary Objection by the Respondent is that the Application is subjudice in view of a similar Application pending ruling before the trial court and that the Application is thus an abuse of court process.

9. Mr. Migiro having confirmed that indeed there was a pending ruling in a similar Application, renders this Application as subjudice and an abuse of the court process. In his response Mr. Shira had attached the copy of the Application pending ruling before the trial court, that said Application was filed by the firm of Moerwa Omwoyo and Company Advocates, just like the present Application. The certificate of urgency in both Applications were signed by John Fredrick Omwoyo Advocate.

10. The court is disappointed in the blatant abuse of the court process in this case by the Advocates who filed similar Application in two courts. Having found this Application to be subjudice and an abuse of the court process the same is herby dismissed with costs which shall be borne by the firm of Moerwa Omwoyo Advocates and/or Mr. John Fredrick Omwoyo of the said firm personally.

11. Orders accordingly.

DATED AND DELIVERED AT KILGORIS THIS 12TH DAY FEBRUARY OF 2025.

HON. M.N. MWANYALE

JUDGE

In the presence of:

Mr. Shira for the Respondent

Mr. Migiro h/b for Moerwa Omwoyo for Applicant

C/A Emmanuel/Sylvia