



Kenya Urban Roads Authority v Muambi Properties Limited & another (Environment and Land Appeal E048 of 2024) [2024] KEELC 13286 (KLR) (20 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13286 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MACHAKOS
ENVIRONMENT AND LAND APPEAL E048 OF 2024
A NYUKURI, J
NOVEMBER 20, 2024**

BETWEEN

KENYA URBAN ROADS AUTHORITY APPELLANT

AND

MUAMBI PROPERTIES LIMITED 1ST RESPONDENT

NATIONAL LAND COMMISSION 2ND RESPONDENT

(Being an appeal from the judgment of Land Acquisition Tribunal delivered on 26th September, 2024 in LATC Number E028 of 2024)

RULING

Introduction

1. Before court is the notice of motion dated 4th October 2024 filed by the Attorney General on behalf of the appellant seeking the following orders;
 - a. Spent.
 - b. Spent.
 - c. This Honourable Court be pleased to grant a stay of execution in Nairobi Land Acquisition Tribunal Case No. E028 of 2024 pending the hearing and determination of this appeal.
 - d. Costs of this appeal be in the cause.
2. The application is supported by the supporting affidavit of Patrick Kathiani Gitila, a Senior Lands Surveyor of the appellant. The applicant's case is that this matter involves the project in respect of upgrading to Bitumen Standards of the Katumani – Vota – Konza Road in Machakos County and which matter was heard and judgment delivered by the Land Acquisition Tribunal on 26th September



- 2024, awarding the respondent the sum of Kshs. 52,632,888/- plus interest and general damages of Kshs. 1,000,000 and interest.
3. That the appellant believes that the judgment of the Tribunal was undeserved hence this appeal. He stated that the appeal was meritorious raising serious issues of law that ought to be determined by this court and that if the orders are not granted herein, the appellant stands to suffer irreparable damage as the amounts involved are colossal which are to be paid from the tax payers' money. That public funds ought to be safeguarded pending determination of the appeal. The applicant attached a copy of the judgment.
 4. The application is opposed. Harrison Kikui Muambi the 1st respondent's Director filed replying affidavit sworn on 18th October 2024 opposing the application. He stated that the application and the appeal lack merit and were only meant to frustrate the 1st respondent from enjoying the fruits of the judgment. He stated that the appellant had already taken possession of the acquired portion of the 1st respondent's land measuring 2 acres part of LR No. 7374/3 and that this court already determined in ELC No. 78 of 2021 that the process of acquisition of the 1st respondent's property was illegal and that the court directed parties to appear before the tribunal for determination of the value of the award as the Tribunal had been operationalized. That none of the parties appealed against the court's decision of 23rd May 2024 in ELC No. 78 of 2021.
 5. He stated that the 1st respondent submitted its own valuation together with the offer given and its acceptance and that the 2nd respondent has never repudiated its own valuation of the acquired land. That when the parties appeared before the Land Acquisition Tribunal, all the parties were obligated to provide independent evidence supporting their own cases and that the appellant has never challenged valuation reports presented by the 1st respondent. That the Tribunal made a decision based on the evidence before it and the appellant cannot blame the Tribunal on account of its failure to present evidence. He stated that there was no valid ground of appeal as the appellant failed to meet evidentiary burden placed on it.
 6. He also averred that the acquisition began in 2018 and that it is now 6 years since the appellant took possession of the 1st respondent's property hence the application is meant to frustrate the 1st respondent. He stated that if stay is granted, the same be on condition that the appellant deposits the entire decretal sum in court or directions be given to compel the appellant to expedite hearing of the appeal within 90 days granted by the Tribunal. He maintained that the appellant was a quasi-government body with its corporate seal and cannot seek unqualified protection on money decrees like the national Government.
 7. In a rejoinder, Patrick Kathiani Gitile for the applicant, filed a supplementary affidavit dated 25th October 2024. He stated that the court in ELC No. 78 of 2021 did not decide on issues but referred the matter to the Land Acquisition Tribunal which has the jurisdiction to confirm, vary or quash the decision of National Land Commission. He stated that the matter was not referred to the Tribunal only for valuation of the award as alleged by the 1st respondent. He stated that parties did not agree that the issues on acquisition had been addressed that the application was meant to frustrate the 1st respondent and stated that the appellant has a right to appeal and is motivated by public interest. He stated that Order 42 Rule 8 of the [Civil Procedure Rules](#) provides that no security shall be required from the Government where the Government has undertaken defence and that Kenya Urban Roads Authority is a Government entity.
 8. The application was disposed by way of written submissions and on record are submissions filed by the appellant on 7th November 2024 and those filed by the respondent on 18th October 2024 both of which this court has duly considered.



Analysis and determination

9. This court has carefully considered the application, the response thereto and submissions filed. The only issue that arise for determination is whether the appellant has met the threshold for grant of stay of execution pending appeal.
10. Order 42 Rule 6 of the [Civil Procedure Rules](#) grants this court the jurisdiction to grant stay of execution pending appeal and provides as follows;
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 2. No order for stay of execution shall be made under subrule (1) unless—
 - a. the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
 3. Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
 4. For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
 5. An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
 6. Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.
11. Therefore, for an applicant to obtain stay of execution pending appeal, they must demonstrate to the court's satisfaction that they stand to suffer substantial loss if stay is not granted and they must also seek stay without unreasonably delay. Besides, such applicant is expected to provide security for the due performance of the decree.
12. However, Order 42 Rule 8 provides that no security shall be required from Government or where the Government has undertaken the defence of the suit or from any public officer sued in respect of actions allegedly done in his official capacity. Section 2 of the [Civil Procedure Act](#) does not define Government.
13. It is not disputed that the appellant herein is a statutory body established by the [Kenya Roads Act](#) with the mandate of management, development rehabilitation and maintenance of all public roads in cities and municipalities in Kenya as provided for in Section 10 of the aforesaid [Act](#). Clearly, the appellant operates on funding from the exchequer and it is my finding that for purposes of the provisions of



Order 42 Rule 8, it is Government and therefore cannot be required to deposit security where stay is granted.

14. On whether the appellant has shown substantial loss, it is clear that the appellant was ordered to pay the sum of Kshs. 52,632,888/- which sum is substantial amount. I agree with the appellant that it stands to suffer substantial loss in the event stay is not granted in view of the amount involved. Although the appellant has stated that it has a merited appeal, it has not denied the fact that part of the 1st respondent's land was used by itself to create a road and that apart from the valuation that the 2nd respondent made for the sum of Kshs. 52,632,888/-, the appellant has not offered an alternative valuation with a different figure. While the appellant retains the right of appeal, the 1st respondent's right for a prompt, full and just compensation for compulsorily acquired land under Article 40(3) of the *constitution* must also be upheld. In the premises, this court grants stay of execution of the judgment in Nairobi Land Acquisition Tribunal Case No. E028 of 2024 for a period of three months only. I make no orders as to costs.

15. It is so ordered.

DATED, SIGNED AND DELIVERED AT MACHAKOS VIRTUALLY THIS 20TH DAY OF NOVEMBER, 2024 THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM

A. NYUKURI

JUDGE

In the presence of:-

Ms. Mwikali holding brief for Mr. Kivuva for 1st respondent

Ms. Mwalozi for applicant

Court assistant – Josephine

