



REPUBLIC OF KENYA



KENYA LAW
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**Jepkemoi v Rono & 4 others (Environment and Land Appeal
32 of 2022) [2023] KEELC 916 (KLR) (16 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 916 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ELDORET
ENVIRONMENT AND LAND APPEAL 32 OF 2022
EO OBAGA, J
FEBRUARY 16, 2023**

BETWEEN

GLADYS JEPKEMOI APPELLANT

AND

AMOS KIBIWOTT RONO 1ST RESPONDENT

OBED PETROLEUM 2ND RESPONDENT

NCBA BANK (K) LIMITED 3RD RESPONDENT

LEGACY AUCTIONEERING SERVICES 4TH RESPONDENT

UASIN GISHU COUNTY LAND REGISTRAR 5TH RESPONDENT

RULING

1. This is a ruling in respect of a notice of motion dated October 19, 2022 brought by the appellant/applicant in which the Applicant seeks stay of execution of the ruling and orders of Hon. Wairimu (SPM) delivered on November 1, 2022 in Eldoret Chief Magistrate E&L case No E200 of 2021 pending the hearing and determination of the Appeal filed herein. The applicant also seeks an injunction restraining the 3rd and 4th defendants/respondent's from selling either by public auction or private treaty property known as LR No Eldoret Municipality/Block 14/2309 pending hearing and determination of the appeal filed herein.
2. A brief background leading to the filing of the present application is that the applicant is the wife of the 1st defendant/respondent. The 1st respondent was the registered owner of LR Eldoret Municipality/Block 14/2309 (suit property) which has since been sold to the 2nd respondent.
3. On July 11, 2017, the 2nd respondent charged the suit property to NIC Bank Limited which later merged with Commercial Bank of Africa to become NCBA Bank (K) Limited. The 2nd respondent



- defaulted in repayment of the loan owed to NCBA Bank (K) Ltd prompting the bank to advertise the suit property for sale.
4. The 2nd respondent moved to the High Court in Eldoret High Court Suit No 23 of 2020 seeking an injunction to stop the auction but the application for injunction was dismissed in a ruling delivered on October 21, 2020.
 5. The applicant then moved to Eldoret Chief Magistrate's court where she filed E&L case E200 of 2022 against her spouse and 4 others. The applicant contemporaneously filed an application for injunction. The application for injunction before the lower court was dismissed in a ruling delivered on August 30, 2022. This is what triggered the appeal herein as well as the present application.
 6. The applicant contends that the suit property is her matrimonial property and that she was not aware of the sale of the suit property to the 2nd respondent. She contends that she had acquired spousal rights over the property and that she did not sign any spousal consent authorizing its sale to the 2nd Respondent and that she was not party to High Court Civil Case No 23 of 2020 and was not aware of its existence.
 7. The applicant contends that if stay of execution and injunction are not granted as prayed, the suit property will be sold and her appeal will be rendered nugatory. She states that the signatures in the affidavits granting spousal consent were forged and that she did not appear before any advocate to sign any documents.
 8. The 3rd and 4th respondents opposed the applicant's application based on a replying affidavit sworn on November 14, 2022. The 3rd and 4th applicants contend that the Applicant's application is an abuse of the process of court as no stay or injunction can be given against a negative order.
 9. In a further affidavit which was filed without leave of court, the applicant tried to respond to matters which arose before the lower court and which were dealt with. The parties were directed to file written submissions which they did. I have considered the applicant's application as well as the opposition to the same by the 3rd and 4th respondents. I have also considered the submissions filed.
 10. This is an appeal from an interlocutory application. The suit before the lower court is still pending. In determining whether to grant stay of execution or injunction this court is expected to determine whether the appeal which had been filed is arguable and as has been repeatedly held by Superior courts, an arguable appeal is not one which will necessarily succeed. See *yellow Horse Inns Ltd v A A Kawir Transporters & 4 others* (2014) eKLR.
 11. To begin with, the trial magistrate merely dismissed the applicant's application. There was no order made for payment of costs. The costs are to await the hearing of the pending case. There was nothing said in the ruling restraining any party or directing any party to do or not do any act. There is therefore nothing capable of being stayed. In other words, the applicant has not demonstrated that she has an arguable appeal.
 12. On whether the intended appeal will be rendered nugatory, it is important to note that the 2nd respondent who filed High Court Civil Case No 23 of 2020 lost an application for injunction to stop the sale. The suit property is no longer in the hands of the 1st respondent who is a spouse of the applicant. The applicant was not party to the High court suit and she did not indicate whether she applied to be joined in the suit. This being the case and given the fact that even if the suit property is sold, she will be compensated in the event she succeeds, I find failure to grant injunction will not render her appeal nugatory. I therefore find no merit in the applicant's application. The applicant is merely pretending not to know of the High court suit, yet before the publication for sale was done,



the property was valued and she stays in the same property. The application is dismissed with costs to the 3rd and 4th respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED AT ELDORET ON THIS 16TH DAY OF FEBRUARY, 2023.

E. O. OBAGA

JUDGE

In the virtual presence of;

Mr. Keter for Mr. Bulbul for Respondent.

Court Assistant –Laban

E. O. OBAGA

JUDGE

16TH FEBRUARY, 2023

