



**Kakeya v Mpusia & 3 others (Environment & Land Case 47 of 2017)
[2023] KEELC 17386 (KLR) (14 February 2023) (Ruling)**

Neutral citation: [2023] KEELC 17386 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 47 OF 2017
MN GICHERU, J
FEBRUARY 14, 2023**

BETWEEN

STEPHEN LESIYA KAKEYA PLAINTIFF

AND

GEORGE KANTAI MPUSIA 1ST DEFENDANT

MOISARI MBUSIA MUNTET 2ND DEFENDANT

SHINA MOISASI CATHERINE 3RD DEFENDANT

**JOSEPHINE SASIMUA (SUED AS THE ADMINISTRATOR OF THE ESTATE OF
MOISASI OEL MUTENTE - SUYIANKA - DECEASED) 4TH DEFENDANT**

RULING

1. This ruling is on the Notice of Motion dated June 7, 2022. The motion which is under orders 42, rules 6 and 51, rule 1, *Civil Procedure Rules* and sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* and other enabling provisions of law seeks one main prayer namely-
 - i. Stay of execution of the judgement and decree herein pending the hearing and determination of an appeal in the Court of Appeal and,
 - ii. Costs of the application be provided for.
2. The motion is supported by an affidavit sworn by the first defendant George Kantai Mpusia, several annexures and eight grounds. In a nutshell the applicant is saying that the decretal sum is huge being kshs 38 million. They have filed an appeal and they have difficulties obtaining proceedings from the court.

If the application is not allowed and execution proceeds, the appeal will be rendered nugatory, more so because the financial capacity of the plaintiff is unknown.



3. The application is opposed by the plaintiff Stephen Lesiyia Ole Kakiya who has sworn a replying affidavit dated June 22, 2022 in which he says that the application has been filed late and the delay of 87 days is inordinate and inexcusable. He also adds that substantial loss has not been proved by the applicants.

He concludes by saying that he owns 233 acres of land which is actually the suit property and if the court allows the application, it should be on condition that a substantial part of the decretal sum be deposited in an interest earning account.

Only the defendants' counsel filed written submissions on September 21, 2022. The plaintiffs' counsel did not file any submissions.

4. I have carefully considered the application dated June 7, 2022 in its entirety including the affidavits, the annexures and the submissions. I find that the same has merit for two reasons.

Firstly, the decree is for a substantial sum of over kshs 38 million. If execution proceeds before the pending appeal is heard and determined, then the defendants stand to suffer substantial loss. Let the defendant be heard on appeal before execution takes place.

Secondly, the defendants have L R Kajjado/Kaputiei-North/812 measuring 80.9 hectares which according to a copy of certificate of official search dated July 5, 2022 is in the name of one of the parties to the suit.

The plaintiff has nothing to lose because if the pending appeal is unsuccessful, there is security for the due performance of the decree. The application dated June 7, 2022 is therefore allowed.

Costs in the cause.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 14TH DAY OF FEBRUARY, 2023.

M N GICHERU

JUDGE

