



**Njuguna & another v Muthumbi (Environment & Land Case
775 of 2017) [2023] KEELC 16737 (KLR) (29 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16737 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE 775 OF 2017**

**JG KEMEI, J
MARCH 29, 2023**

BETWEEN

VERONICA WAIRIMU NJUGUNA 1ST PLAINTIFF

MARGARET WANJIKU NJAU 2ND PLAINTIFF

AND

PAUL GATUNDU MUTHUMBI DEFENDANT

RULING

1. Dissatisfied with this hon. court's Judgment delivered on September 15, 2022 dismissing the plaintiffs' case with costs to the defendant, the plaintiffs have moved this court for orders in the main for stay of execution of Judgment order and decree for 90 days pending the filing, entry and determination of the intended appeal and the defendant be enjoined against any form of adverse and negative interference with land parcel No. Limuru/Kamirithu/447 (suit land) pending the determination of appeal.
2. The Motion is supported by the joint affidavit of the plaintiffs sworn on 3/11/2022. They deposed that in the impugned Judgment, the Court did not declare the rightful owner of the land parcel No. Limuru/Kamirithu/447 (the suit land) to justify the defendant's move to destroy crops and cut crops under the police watch. That they were not served with any eviction notice and there being need to preserve their farm produce, the plaintiffs beseech the court to order stay of execution of the Judgment for at least 90 days for their appeal to be heard.
3. The defendant filed his grounds of opposition dated 18/11/2022 and a replying affidavit sworn on 29/11/2022. He argued *inter alia* that the conditions for granting stay of execution have not been met; Plaintiffs have not filed a notice of intention to act in person; the Defendant has a right to develop his property; plaintiffs have not filed any appeal nor have they sought extension of time in the Court of Appeal.



4. The Application was argued orally in court on 5/12/2022 and the court has considered the rival arguments.
5. The main issue for determination is whether the Application is merited.
6. Before delving into the merits of the Application, it is imperative to address the competency of the instant Motion. It is filed pursuant to the provisions of Order 51 Rule 1, 3 & 4 [Civil Procedure Rules](#) and section 3A of the [Civil Procedure Act](#) and filed personally by Veronica Wairimu Njuguna and Margaret Wanjiku Njau. The Defendant has raised an objection that the said Plaintiffs have not filed any notice of intention to act in person since they were represented by Counsel namely C.W Kinuthia & Co. Advocates before delivery of the impugned Judgment.
7. There is no evidence before this court to show that the provisions of Order 9 Rule 9 [Civil Procedure Rules](#) have been complied with. Order 9 Rule 9 Civil Procedure Rules provides;

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- “9. Change to be effected by order of court or consent of parties
When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after Judgment has been passed, such change or intention to act in person shall not be effected without an order of the court— [Emphasis mine]
 - (a) upon an application with notice to all the parties; or
 - (b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

8. The above provision is coached in mandatory terms and obliged the plaintiffs to have filed an application or record a consent to allow them act in person post -Judgement. Having failed to do so, the Application before court is improperly filed and must fail. Whereas parties have a right to choose legal representation or act in person as the case maybe, the laid down procedures must be complied with as stipulated above.
9. This court has previously pronounced itself on this subject in the case of [Stephen Mwangi Kimote v Murata Sacco Society](#) [2018] eKLR that;

- “12. Article 50 (2)(b) of the *Constitution* protects the rights of an accused person to choose and be represented by an Advocate. Order 9 does not impede the right of a party to be represented by an Advocate of his choice. It only provides rules to impose orderliness in civil proceedings. Any change of Advocate should comply with the rules. Chaos would reign if parties can change Advocates at will without notifying the Court and the other parties ...”

10. In the Court of Appeal decision in the case of [Symposia Consult Limited v George Gikere Kaburu & 2 others](#) [2019] eKLR the Learned Appellate Judge while striking out an application of a similar nature stated as follows;

“While I sympathize with the predicament of the applicant’s Managing Director’s wife, the non-compliance of the rules of procedure by the applicant’s Counsel are fatal to the application before me. As it has often been said, every game is its rules.”



11. The upshot of the foregoing is that the Application is improperly before court and the same is hereby struck out with no orders as to costs.
12. Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 29TH DAY OF MARCH, 2023
VIA MICROSOFT TEAMS.**

J G KEMEI

JUDGE

Delivered online in the presence of;

Awuocha for Plaintiff/Respondent

Defendant/Respondent – Absent

Rotich HB Otieno for Objector / Applicant

Court Assistant – Lilian

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