



**Kangeri & 4 others v Karingithi & 5 others (Environment and Land Appeal 32 of 2021) [2023] KEELC 16489 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16489 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 32 OF 2021**

**JO OLOLA, J  
MARCH 23, 2023**

**BETWEEN**

**JOHN WANJAU KANGERI ..... 1<sup>ST</sup> APPELLANT  
JULIUS KARINGITHI KANGERI ..... 2<sup>ND</sup> APPELLANT  
GEORGE GITHINJI KANGERI ..... 3<sup>RD</sup> APPELLANT  
BENSON GITHUI KANGERI ..... 4<sup>TH</sup> APPELLANT  
STANLEY NYAMU KANGERI ..... 5<sup>TH</sup> APPELLANT**

**AND**

**JAMES KARINGITHI ..... 1<sup>ST</sup> RESPONDENT  
LUCY GAKENIA KAMANJA ..... 2<sup>ND</sup> RESPONDENT  
ELIZABETH WAGITHI ..... 3<sup>RD</sup> RESPONDENT  
RICHARD GITHAIGA ..... 4<sup>TH</sup> RESPONDENT  
THE HONOURABLE ATTORNEY GENERAL ..... 5<sup>TH</sup> RESPONDENT  
THE LAND REGISTRAR, NYERI DISTRICT ..... 6<sup>TH</sup> RESPONDENT**

**RULING**

1. By the notice of motion herein dated May 25, 2022, the five (5) appellants pray for orders as follows:
  1. That pending the hearing and determination of this application there be a temporary order for stay of execution of the judgment and decree issued on November 3, 2021;
  2. That pending the hearing and determination of this appeal, there be an order for stay of any further execution of the decree issued on November 30, 2021; and



3. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn by the 5<sup>th</sup> appellant Stanley Nyamu Kangeri and is premised on the grounds that:
  - (i) The applicants are the children of one Sospeter Kangeri Karingithi (now deceased) who was the registered owner of parcel of land title No Magutu/Gatei/312;
  - (ii) That prior to his death the deceased sub-divided the said parcel of land into five portions viz Magutu/Gatei/1582, 1583, 1584, 1585 and 1586 for the purpose of distribution to his children who are the appellants herein;
  - (iii) That the deceased obtained the relevant land control board consent to subdivide, signed the mutation form, obtained consent to transfer and signed the transfer forms for the transfer of the said portions to the appellants;
  - (iv) The appellants were dissatisfied with the judgment of the lower court and filed this appeal;
  - (v) The lower court in its judgment ordered for the cancellation of the said 5 titles and for them to be consolidated and revert back to the original title No Magutu/Gatei/312;
  - (vi) There is partial execution but part of the decree is yet to be executed; and
  - (vii) If the decree is wholly executed, the appellants stand to suffer irreparable damage.
3. The 1<sup>st</sup> to 4<sup>th</sup> respondents are opposed to the grant of the orders sought. In their joint grounds of opposition dated June 21, 2022, the four (4) state:
  1. That the application is bad in law, misconceived, untenable and does not meet the threshold of granting the prayers sought;
  2. That the application itself has not been supported by any laws on the face of it and is therefore defective;
  3. That no memorandum of appeal has been served upon the respondents;
  4. That the orders sought have been overtaken by events and as such are of the consequence to the appellants; and
  5. That the application herein is merely meant to delay the cause of justice.
4. In addition to the grounds of opposition, the said respondents have also filed a replying affidavit herein on July 29, 2022. In the replying affidavit sworn on their behalf by James Karingithi (the 1<sup>st</sup> respondent) on June 21, 2022, the 1<sup>st</sup> to 4<sup>th</sup> respondents aver that the application is defective on the face of it and is meant to delay the cause of justice.
5. The respondents aver that the orders sought in the application have been overtaken by events and that upon delivery of the judgment on September 13, 2021, a stay of execution of 30 days had been allowed. Once the same lapsed, the respondent extracted the decree and submitted it to the Ministry of Lands for registration.
6. The respondent further aver that they conducted a search over the title to the suit property on April 13, 2022 when it became clear to them that the title had reverted back to the original Title No. Magutu/Gatei/312 in the name of their deceased father Sospeter Karingithi Kangeri. The respondents assert that it is only when they moved to finalise the process of succession that they were informed by the



- Magutu Location area chief that there was an appeal pending and that no memorandum of appeal had been served upon them as at the time of swearing the replying affidavit.
7. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the learned advocates representing the parties herein.
  8. By their application before me, the five appellants have urged the court to stay any further execution of the decree emanating from the lower court dated November 30, 2021. It is the appellants' case that they are the children of one Sospeter Karingithi Kangeri (now deceased) who was the registered proprietor of the suit property previously known as title No Magutu/Gatei/312.
  9. The appellants assert that prior to his death, the deceased sub-divided the piece of land into five (5) portions being Title Nos. Magutu/Gatei/1582, 1583, 1584, 1585 and 1586 which he then distributed to the appellants herein. It is their case that upon such sub-divisions, they took up their respective portions and developed the same and that thence they stand to suffer great loss and damage if the said portions of land are reconsolidated and registered in the name of their deceased father as ordered by the lower court.
  10. In respect to an order for stay of execution, order 42 rule 6 of the [Civil Procedure Rules](#) 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 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 orders set aside.
    - (2) No order for stay of execution shall be made under sub-rule (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 applicants.”
  11. It therefore follows that under order 42 rule 6(2) of the [Civil Procedure Rules](#), a person seeking an order of stay of execution should satisfy the court that:
    - (a) He has made the application without unreasonable delay;
    - (b) That he is likely to suffer substantial loss unless the order is given; and
    - (c) That he has given such security as the court may order for the due performance of the decree or order as may ultimately be binding upon himself.
  12. In the matter before me, the judgment sought to be stayed was delivered on September 13, 2021. While the appellant lodged their memorandum of appeal herein on September 21, 2021, no application for stay would be made until some eight (8) months later when this present application was lodged on May 25, 2022. The appellants have not given any explanation whatsoever as to why it took them such a long period of time to apply for an order of stay of execution.



13. From the material placed before me, the appellants were granted a 30 day stay of execution from the date of judgment. While it was not contested that they and their advocates on record were absent from court on September 13, 2021 when the judgment was read, it was clear that they learnt of the same within one week of the delivery and hence their ability to lodge the memorandum of appeal on September 21, 2021.
14. Upon lapse of the 30 days stay period, the respondents herein proceeded on November 30, 2021 to extract the decree which reads as follows:

“it is ordered and decreed

  1. That property title numbers Magutu/Gatei/1582/1583/1584/1585/1586 are void ab initio, irregular and illegal and the same be cancelled;
  2. That the title deed in respect of title number Magutu/Gatei/312 reverts back to the (name of the) deceased Sospeter Karingithi alias Kangeri s/o Karingithi;and
  3. That costs of the suit are awarded to the plaintiffs.”
15. In their replying affidavit to the application, the respondents have annexed a certificate of official search that shows that as at April 13, 2022, the sub-divisions had been so voided and that the title had reverted to the name of the appellants deceased father as decreed by the court. While the appellants contend that the decree had only been partially executed, I was unable to see anything else pending to be done pursuant to the decree as extracted.
16. It follows that I am persuaded not only that the application before me was instituted after an inordinate delay but also that the same has been overtaken by events.
17. The application dated May 25, 2022 is accordingly dismissed with costs to the respondents.

**Ruling dated, signed and delivered in open Court and virtually at Nyeri this 23<sup>rd</sup> day of March, 2023.**

**In the presence of:**

Mr. Gikonyo for the Appellant

Mr. Mahugu for the 1<sup>st</sup> to 4<sup>th</sup> Respondents

Court assistant - Kendi

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**J. O. Olola**

**JUDGE**

