



REPUBLIC OF KENYA



KENYA LAW
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**Munyua v Wamuyu & 4 others (Environment and Land Appeal
48 of 2021) [2023] KEELC 16353 (KLR) (23 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16353 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 48 OF 2021**

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

BETWEEN

ZACHARY MAINA MUNYUA APPLICANT

AND

NANCY WAMUYU 1ST RESPONDENT

TERESIA WAKANYI MUGO 2ND RESPONDENT

BEATRICE WAIRIMU MUNYUA 3RD RESPONDENT

CATHERINE WANJIRU MUNYUA 4TH RESPONDENT

DAMARIS WANJIKU MUNYUA 5TH RESPONDENT

RULING

1. By the Notice of Motion dated January 17, 2022, Zachary Maina Munyua (the Applicant) prays for orders:
 3. That the Applicant's application dated December 10, 2021 at the Karatina Law Court be suspended until this application is heard and determined;
 4. That the Respondent's application dated December 21, 2021 at the Karatina Law Court be suspended until this application is heard and determined;
 5. That in pursuit of the provisions of Article 35 of our 2010 Constitution the Karatina Law Court Registry issues the Applicant with the proceedings of the ELC Court Case No 25 of 2018 within one week (7) days from the date of service of this order; and
 6. That the Respondent's Advocate C M Kamwenji be declared in contempt of Court for disobeying the Court order issued by the Hon KM Njalale, Principal



Magistrate, Karatina on the 16th day of December, 2021 and be committed to jail for not more than 6 (six) months.

2. The application which is supported by an Affidavit sworn by the Applicant is premised on the grounds:
 - (i) That the Applicant has already embarked on Appeal by filing all the other requisite documents at the High Court but for the Court proceedings;
 - (ii) That the Applicant applied for the proceedings on November 22, 2021 and is waiting to receive them from the Karatina Court Registry;
 - (iii) That the Respondent's Advocate unprocedurally served him with an application of the execution of the decree on January 4, 2022 which is scheduled for hearing on February 14, 2022;
 - (iv) That the filing of that application on December 21, 2021 was an abuse of the Court process and was in contempt of the Court order already in force;
 - (v) That the hearing of (that) application will prejudice the Applicant's Appeal at the High Court; and
 - (vi) That the service of the same application to the Applicant on January 4, 2022 after the Advocate's receipt of the Court order on December 22, 2021 was an abuse of the Court process and was also in contempt of the existing Court Order.
3. The application is opposed by Nancy Wamuyu (the 1st Respondent). In a Replying Affidavit sworn by her Advocate Charles Murage Kamwenji, the 1st Respondent avers that the application herein amounts to an abuse of the Court process. The 1st Respondent avers that the applications which the Applicant seeks to have suspended were already heard and determined by the Court at Karatina vide a Ruling delivered on June 15, 2022.
4. The 1st Respondent further avers that the supply of proceedings is an administrative function of the Court and that the Court cannot be asked to compel another Court to issue copies of proceedings in a matter not before it.
5. The 1st Respondent further avers that the order which is said to have been disobeyed by her Counsel on record was only served upon the Counsel a day after he filed an application for a Notice to Show Cause against the Applicant on December 21, 2021.
6. I have carefully perused and considered the Applicant's application and the response thereto by the 1st Respondent. I have similarly perused and considered the submissions placed before me by the Applicant acting in person. I was unable to find any submissions filed on behalf of the Respondent.
7. By the application before me, the Applicant seeks to have suspended two applications that were said to be pending before the Karatina Magistrate's Court. He also urges this Court to compel the Karatina Law Courts to supply him with proceedings of his case before the said Court within seven (7) days. In addition, the Applicant has urged this Court to declare the 1st Respondent's Counsel on record Mr CM Kamwenji Advocate to be in contempt of a Court order issued in the Lower Court and to commit him to jail for a period not exceeding six (6) months.
8. Those prayers arise from the Applicant's contention that he has already embarked on an Appeal against the decision made against him in Karatina PMELC Case No 25 of 2018 and has been waiting for



proceedings from the Karatina Court Registry. The Applicant accused the 1st Respondent's counsel of engaging in what he terms as a criminal enterprise with the Court Registry staff to deny him access to the said proceedings. He further accuses the said Advocate of unprocedurally filing an application for execution of the decree while there was in existence a Court order staying execution of the decree.

9. From the material placed before me, it was apparent that the two applications sought to be suspended were an application for stay of execution dated December 10, 2021 filed by the Applicant himself as well as a Notice to Show Cause application dated December 21, 2021 filed by the 1st Respondent herein. From a perusal of the Supporting Affidavit filed by the Applicant, it was apparent that he was concerned that the determination of those applications would prejudice his Appeal which is pending before this Court for hearing and determination.
10. It was however clear to me that the application to suspend the two applications had been overtaken by events as at the time this application was being heard in October 2022. By a Ruling delivered on June 15, 2022, the Honourable KM Njalale, Principal Magistrate had determined the two applications and granted a stay of execution pending appeal to the Applicant on condition that he provides security for costs in the sum of Kshs 150,000/-.
11. From his Supplementary Affidavit sworn and filed herein on June 29, 2022, it is apparent from a reading of Paragraphs 18 to 22 thereof that the Applicant was aware of the said Ruling and that he considers the requirement for him to deposit security for costs as being unfair to himself.
12. As it were, the requirement to provide security is one of the conditions set out to be provided when an application for stay of execution is sought under Order 42 Rule 6(2)(b) of the Civil Procedure Rules. The grant of such an order is discretionary and where the Applicant was of the view that the discretion had been exercised improperly, the option available to him was an appeal and not to complain against the same as he has done in his Supplementary Affidavit aforesaid.
13. It was also clear to me that the filing of the Notice to Show Cause by the Applicant's Counsel was done a day before the temporary order of stay granted by the trial Court was served upon the Respondents and that they were unaware of the same as at the time of moving to Court. The claim that the said Counsel purposely closed his office on 17th, 18th and December 20, 2021 to avoid being served with the temporary order of stay does not appear to me to have any basis. In any event nothing was placed before me to demonstrate that the offices were closed on the said dates and/or that they were closed for the said ulterior purpose.
14. At any rate, I did not think that the filing of a Notice to Show Cause application in a Court file can be termed as an act of contempt of a Court order staying execution more so when the person filing the same was unaware of the existence of an order of stay. All that the Applicant would be required to do when the application for Notice to Show Cause came up was for him to point out to the Court that there existed an order of stay in the Court file.
15. In the circumstances herein I am persuaded that the Motion dated January 17, 2022 has no basis both in fact and in law. I dismiss the same with costs.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 23RD DAY OF MARCH, 2023.**

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J. O. OLOLA
JUDGE



In the presence of :

Mr. Zachary Maina Munyua – the Applicant present in person

No appearance for the Respondents

Court assistant – Kendi

