



REPUBLIC OF KENYA



**Kiambu Murutani Company Limited v Njuguna & 2 others (Environment & Land Case 942 of 2013) [2023] KEELC 18464 (KLR) (16 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 18464 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 942 OF 2013  
LC KOMINGOI, J  
MARCH 16, 2023**

**BETWEEN**

**KIAMBU MURUTANI COMPANY LIMITED ..... PLAINTIFF**

**AND**

**MICHAEL NJUGUNA ..... 1<sup>ST</sup> DEFENDANT**

**EQUITY BANK LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**ANTIQUA AUCTIONS ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. Judgement was entered in this matter on 10<sup>th</sup> December 2020 in favour of the Plaintiff. On 18<sup>th</sup> May 2022, a party and party bill of costs filed by the Plaintiff's counsel was taxed at ksh.504,802/=.
2. The 1<sup>st</sup> Defendant then filed this application dated 13<sup>th</sup> June 2022.
3. It is brought under Sections 1A, 1B, & 3A of the [Civil Procedure Act](#) and Order 41 Rule 6 of the [Civil Procedure Rules](#).
4. It seeks orders;
  - a. Spent.
  - b. Spent.
  - c. At the hearing of this application inter partes, this Honourable Court be pleased to issue a stay of proceedings relating to enforcement of the certificate of costs as against the 1<sup>st</sup> Defendant pending the hearing and conclusion of the 1<sup>st</sup> Defendant's appeal, to wit, Civil Appeal No.E733 of 2022: Michael Njuguna v Kiambu Murutani Company Ltd.
  - d. Costs hereof be provided for.



5. The application is supported by the grounds on the face of the application and on the 1<sup>st</sup> Defendant's supporting affidavit sworn on 13<sup>th</sup> June 2022.
6. He deponed that he has preferred an appeal against the decision of this Honourable Court being Civil Appeal No.E733 of 2022, Michael Njuguna v Kiambu Murutani Company Limited. He pleaded with the court to stay any execution process relating to the taxed party and party bill of costs. He argued that if execution takes place, he will be prejudiced and suffer loss given that the judgment of the court as well as the decree may be vacated on appeal while the Plaintiff would not be prejudiced at all.
7. The application was opposed by the Plaintiff by way of a replying affidavit sworn by Antony Kamuna; the chairman on 1<sup>st</sup> July 2022. He deponed that the 1<sup>st</sup> Defendant has previously filed three similar applications seeking stay orders. He pointed out the application dated 2<sup>nd</sup> February 2021 which was dismissed, application dated 9<sup>th</sup> July 2021 and an application filed before the court of appeal being Civil Appeal Application No.E336 of 2021 which was pending ruling at the time.
8. He deponed that the Plaintiff has not been served with the alleged memorandum of Appeal and in any case, the Applicant has not met the threshold for grant of stay hence the application should be dismissed.
9. The Plaintiff filed written submissions dated 23<sup>rd</sup> September 2022. It was its submission that from the wording of the application filed by the Applicant in the Court of Appeal in Civil Appeal Application No.E336 of 2021, the Applicant is seeking similar orders from two different courts which is an abuse of the court process.
10. It was further submitted that this court is functus officio on the issue of stay of execution having rendered itself in a ruling delivered on 24<sup>th</sup> June 2021. Counsel also submitted that the court should decline to grant stay of execution where an award of damages would be sufficient to compensate the Applicant should his appeal succeed. It further submitted that the Plaintiff can readily pay the 1<sup>st</sup> Defendant ksh.504, 802/= which is the amount he seeks to stay.
11. The Applicant did not file submissions.
12. I have considered the notice of motion and the affidavit in support. I have also considered the response thereto and the written submissions. The issue for determination is whether this application is merited.
13. Proceedings indicate that the 1<sup>st</sup> Defendant filed a Notice of Motion application dated 2<sup>nd</sup> February 2021 seeking stay of execution of the judgment herein among other prayers. He had also filed a Notice of Appeal dated 17<sup>th</sup> December 2020. The Plaintiff also filed a Notice of Motion application dated 3<sup>rd</sup> March 2021 seeking eviction orders against the 1<sup>st</sup> Defendant from Title Number Kiambu Municipality Block 1/57.
14. In its ruling of 24<sup>th</sup> June 2021, this court considered both applications and found no merit in the entire application dated 2<sup>nd</sup> February 2021 and dismissed it. The court also allowed the Plaintiff's application dated 3<sup>rd</sup> March 2021.
15. In my view, this court has already considered the issue of stay of execution and the ruling dated 24<sup>th</sup> June 2021 has not been appealed against.
16. Further, the 1<sup>st</sup> Defendant also filed an application for stay in the Court of Appeal being Civil Appeal Application No.E336 of 2021 which was pending ruling at the time this application was heard. While that court has jurisdiction to determine the issue of stay of execution pending appeal, it is an abuse of



the court process for the 1<sup>st</sup> Defendant to file similar applications in the court of Appeal and in this court.

17. In conclusion, I find no merit in this application and the same is dismissed with costs to the Plaintiff/ Respondent.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUARLLY AT KAJIADO THIS 16<sup>TH</sup> DAY OF MARCH 2023.**

.....

**L. KOMINGOI**

**JUDGE**

**In the presence of:-**

No appearance for the Plaintiff

No appearance for the Defendant Mutisya- Court Assistant

