



**Gituma v Thambo (Environment and Land Appeal E121 of 2021)
[2023] KEELC 16290 (KLR) (15 March 2023) (Directions)**

Neutral citation: [2023] KEELC 16290 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E121 OF 2021**

CK YANO, J

MARCH 15, 2023

BETWEEN

MATHEW GITUMA APPELLANT

AND

COSMAS MURUNGI THAMBO RESPONDENT

(Ruling dated December 8, 2021 by Hon. Nzili J.)

DIRECTIONS

Directions

1. This matter first came before me on September 29, 2022 when Mr. Mwiti Advocate appeared for the appellant while the respondent was present in person. The appellant's counsel informed the court that the respondent had filed two applications which the appellant had responded to by filing a replying affidavit and a preliminary objection. Mr. Mwiti further stated that they had not yet served those responses upon the respondent and gave an undertaking to serve him on the material day. Learned counsel for the appellant also proposed that the said application be canvassed by way of written submissions, a request that was not opposed by the respondent.
2. Pursuant to the above, the court directed that the applications dated July 29, 2022 and September 15, 2022 be canvassed by way of written submissions. The respondent was directed to file and serve his submissions within 14 days from 29th September, 2022 while the appellant was to file and serve his submissions within 14 days of service by the respondent. The court then fixed the matter for mention on November 24, 2022 to confirm filing of those submissions and to fix a date for ruling in respect to the said applications.
3. When the matter came up before court on November 24, 2022, only Mr. Mwiti was present. The respondent was not present in court although the date was fixed in his presence on September 29, 2022. However, none of the parties had complied with the directions given by the court on September 29,



2022 with regard to filing of written submissions. Mr. Mwititi requested for 14 more days to comply, but the court was not persuaded that there was any good reason given for non-compliance with the directions of court given on September 29, 2022. Consequently, the court proceeded to give a ruling date of March 15, 2023 based on the affidavits on record.

4. In the course of perusing the court record in preparation of writing the said ruling, the court noted that there is a ruling dated December 8, 2021 by Hon. Nzili J. in which he dismissed the appellant's application dated November 22, 2021 for stay of execution pending appeal.
5. Further, the record shows that pursuant to an application made by the respondent in the absence of the appellant Hon Nzili, J allowed the application dated July 29, 2022 in terms of the prayers seeking for the rent arrears of 420,000/= to be deposited before court within 14 days from that date. The learned judge then fixed the matter for mention before this court on September 29, 2022.
6. Considering that part of the prayers sought in the application dated September 29, 2022 were issued by ELC No 2 and noting that the two applications are seeking almost similar orders and considering that the other court dealt with the application for stay pending appeal, I direct that this matter be concluded before ELC No 2. For those reasons therefore I was unable to write the ruling as earlier scheduled. I therefore direct that this matter be mentioned before ELC No 2 on a date to be given by the court for that court to give further directions in the matter.

DIRECTIONS GIVEN AT MERU THIS 15TH DAY OF MARCH 2023

In the presence of:

Mwititi for Appellant

No appearance for Respondent

Court Assistant - Kibagendi

C.K YANO

JUDGE

