



Marubu & another v Mathenge & 3 others (Sued on their own behalf and on behalf of All other occupants of the suit premises) (Environment & Land Case 988 of 2014) [2023] KEELC 17050 (KLR) (20 April 2023) (Ruling)

Neutral citation: [2023] KEELC 17050 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 988 OF 2014**

LN MBUGUA, J

APRIL 20, 2023

BETWEEN

ROBERT NG'ANG'A MARUBU 1ST PLAINTIFF

CAROLINE MURUGI 2ND PLAINTIFF

AND

GICHUKI MATHENGE ALIAS WAMOTHER 1ST DEFENDANT

JULIUS MBOYA MUNYORA ALIAS WAMUNYORA 2ND DEFENDANT

SAMUEL NJUGUNA MWANGI 3RD DEFENDANT

IRUNGU MUCHANGI 4TH DEFENDANT

**SUED ON THEIR OWN BEHALF AND ON BEHALF OF ALL OTHER
OCCUPANTS OF THE SUIT PREMISES**

RULING

1. Judgment was delivered herein on October 27, 2022 whereby the plaintiff's claim of *inter-alia*, the eviction of the defendants from land parcels LR 209/4401/ 384, 385, and 390 was dismissed while the Counterclaim of the defendants on adverse possession was allowed.
2. The plaintiffs have brought forth on application dated February 6, 2023 seeking a stay of execution of the said judgment pending the hearing and determination of the appeal, the same being Court of Appeal C A No E901 of 2022. The application is premised on the grounds on the face of the application and the supporting affidavit of the 1st plaintiff. The applicants contend that the 30 day's stay granted at the time of delivery of the judgment has since lapsed and unless a further stay of execution of the judgment is given, the suit parcels will be registered in the names of the defendants. This in turn



will occasion substantial loss of time and money upon the applicants in the process of recovering the said suit parcels.

3. The defendants have opposed the application vide the Replying Affidavit of the 2nd defendant, one Julius Mboya Munyora dated February 24, 2023. They contend that the applicants were granted 30 days stay upon the delivery of the judgment, but they failed to make the current application in good time after the lapse of the 30 days. Thus the application has not been brought in good faith and ought to be dismissed.
4. I have considered all the arguments raised herein.
5. The relief of stay of execution pending Appeal is governed by the provisions of Order 42 Rule 6 of the *Civil Procedure Rules*. Under subrule (4) thereof, an appeal to the Court of Appeal is deemed to have been filed when under the Rules of that Court notice of appeal has been given.
6. In *Loice Khachendi Onyango v Alex Inyang'u & another* [2017] eKLR the court held that the relief of stay of execution is discretionary but the discretion must be exercised judiciously. In *Dickson Muricho Muriuki v Timothy Kagundu Muriuki & 6 others* [2013] eKLR, the case of *Equity Bank Ltd. v West Link MBO Ltd.* – Civil Application No. 78 of 2011 was cited where Musinga, J.A (as he then was) held that;

“Courts of law exist to administer justice and in so doing they must of necessity balance between competing rights and interests of different parties but within the confines of law, to ensure the ends of justice are met.”

7. I find that the applicants delayed in filing the current application. But again, they duly filed the notice of appeal, they have lodged the appeal and have apparently served the record of appeal. Balancing the interests of the protagonists, taking into account that about half a year has gone by since the date of delivery of the judgment, I hereby proceed to give a stay of execution for a period of 4 (four Months) from the date of delivery of this ruling. The applicants shall meet the costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 20TH DAY OF APRIL, 2023 THROUGH MICROSOFT TEAMS.

LUCY N MBUGUA

JUDGE

In the presence of:-

M/s Kimani holding brief for M/s Wambua for the Plaintiff

M/s Irungu holding brief for J I Mwangi for the Defendants

Court assistant: Joan

