



REPUBLIC OF KENYA



KENYA LAW
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**Murithi & 6 others v Mwithimbu (Environment and Land Appeal
E082 of 2022) [2023] KEELC 17708 (KLR) (31 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E082 OF 2022**

CK NZILI, J

MAY 31, 2023

BETWEEN

SUSAN KATHAMBI MURITHI 1ST APPELLANT
TISILLA KARAMBU GICHOHI 2ND APPELLANT
SAMMY MWIRIGI 3RD APPELLANT
GATWIRI NANCY MURITHI 4TH APPELLANT
FAITH KAGWIRIA 5TH APPELLANT
PHYLLIS KAROKI 6TH APPELLANT
LYDIA KENDI 7TH APPELLANT

AND

JUSTUS MURITHI MWITHIMBU RESPONDENT

RULING

1. The court is asked to stay the execution of the judgment or decree delivered on 13.12.2022 at the lower court pending the hearing and determination of this appeal. The grounds are contained on the face of the application and in the supporting affidavit sworn by Sammy Mwirigi on 9.3.2023.
2. The applicants averred that the effect of the decree is to remove the inhibition subsisting on the title to LR No Kibirichia/Ntumburi/406 and also evict him from the family land, yet the appeal before this court raises triable issues. If the orders sought are not granted, the applicant will suffer heavy loss and damage.
3. The respondents opposed the application on the grounds of opposition dated 17.4.2023. The 1st ground being that the applicant seeks to stay a negative order, and 2nd that it is an abuse of the court process.



4. For a party to deserve a stay of execution, he must file the application timeously, demonstrate the substantial loss, offer security for the satisfaction of the decree should the appeal fail, and lastly, indicate that it is in the interest of justice to grant the orders sought.
5. In the judgment dated 13.12.2022, the plaint and the counterclaim were dismissed. The appeal herein was filed on 22.12.2023, while the application for stay was filed on 16.3.2023. A delay of over two months has not been explained at all. No positive order was made for the respondent and against the applicant's worthy executing. The application to remove the inhibition order does not amount to execution, for it was a consequence of the outcome and which under section 68 of the Land Registration Act came to a halt on the occurrence of the event, a name which was the conclusion of the suit.
6. The supporting affidavit is also scanty and short of a demonstration of any danger occurring to the substratum of the appeal. The applicants have given no particulars of the nature, manner, and details of the likely loss and damage to them or the substratum of the appeal.
7. It is not enough to state there will be substantial loss and damage without evidence, as held in James Wangalwa & another v Agnes Naliaka Cheseto (2012) eKLR, that the process of execution is a legal process which by itself does not amount to substantial loss and that a party must give other vitiating factors likely to affect the substratum of the appeal. Similarly, the applicants have not offered any security for the due realization of the decree should the appeal fail as held in Butt v Rent Restriction Tribunal (1982) KLR 417, it is not in the interest of justice to grant the orders. The application is, as a result of this, dismissed with costs. Lower court file be availed. Mention before the Deputy Registrar on 13.7.2023.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 31ST DAY OF MAY 2023

HON. CK NZILI

ELC JUDGE

In presence of:

C.A John Paul

Igweta for applicant

Kimathi for respondent

