



**M'mugambi v Ngalgalo (Environment and Land Appeal
E016 of 2022) [2023] KEELC 17679 (KLR) (29 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17679 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E016 OF 2022**

AK BOR, J

MAY 29, 2023

BETWEEN

HEZEKIAH GICHURU M'MUGAMBI APPELLANT

AND

ABDUBA HAR NGALGALO RESPONDENT

(An application for stay of execution of the decree emanating from the judgment of the Learned Chief Magistrate delivered on December 14, 2022 in Nanyuki CMCC No 86 of 2019.)

RULING

1. Through the application date February 17, 2023, the Appellant seeks stay of execution of the decree emanating from the judgment of the Learned Chief Magistrate delivered on December 14, 2022 in Nanyuki CMCC No 86 of 2019 to prevent the Respondent from selling, transferring or otherwise dealing with the suit property pending hearing and determination of the appeal.
2. The application was brought on the grounds that being dissatisfied with the judgment of the Learned Magistrate and having preferred an appeal against that decision, the Appellant is apprehensive that the Respondent may interfere with the suit property before his appeal is determined. The Appellant swore the affidavit in support of the application and attached copies of the judgment and the memorandum of appeal.
3. The Respondent opposed the application for stay of execution vide the Replying Affidavit he swore on 8/3/2023. He averred that there had been unexplained delay in bringing this application, which he contended was intended to stop him from enjoying the fruits of the judgment from the Magistrate's court. He emphasised that it was not true that the Appellant would suffer huge losses if stay was not granted, mainly because he does not reside on the land and had no interest in it.
4. The application was argued orally by counsel for both parties. The Appellant's counsel submitted that he was apprehensive that the decree may be executed and the Respondent may dispose of the land.



Regarding security, she urged that it is the land that is in contention and the court will determine who should remain in the land in the appeal. She urged that an application for stay can be made any time and gave a chronology of the steps taken after the Appellant filed a memorandum of appeal in person, which she added may require amendment.

5. The Respondent submitted that there was unreasonable delay in filing the application. Further, that the Appellant had no interest in the suit land because he sold it and does not reside on it.
6. In response, the Appellant submitted that he would suffer irredeemably if the suit land were transferred before the appeal is determined. He urged that that would affect the appeal and its outcome.
7. The grounds upon which the court may stay execution of a judgment are well settled. An applicant must demonstrate that they will suffer substantial loss if the order is not granted, have an arguable appeal, offer security and must have brought the application for stay without delay.
8. The court has looked at the judgment and notes that the Learned Magistrate found that the plaintiff had established his claim to the suit land which the Appellant sold to the plaintiff. Looking at the memorandum of appeal and the judgment of the Learned Magistrate, it is difficult to establish what loss may result to the Appellant if an order for stay of execution is not granted. The Appellant has not offered any security for the performance of such order as may ultimately be binding on him.
9. The application dated February 17, 2023 is dismissed with costs to the respondent.

DELIVERED AT NANYUKI THIS 29TH DAY OF MAY 2023.

K. BOR

JUDGE

In the presence of:

Ms. Muthoni Ngongu for the Appellant

No appearance for the Respondent

Ms. Stella Gakii – Court Assistant

