



**Karuri & 6 others v Ndwiga (Environment & Land Case  
107 of 2016) [2023] KEELC 17735 (KLR) (25 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17735 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA  
ENVIRONMENT & LAND CASE 107 OF 2016**

**EC CHERONO, J**

**MAY 25, 2023**

**BETWEEN**

**PURITY KABARI KARURI ..... 1<sup>ST</sup> PLAINTIFF**  
**JUSTIN MUGO NDWIGA ..... 2<sup>ND</sup> PLAINTIFF**  
**JACKSON GACHOKI NDWIGA ..... 3<sup>RD</sup> PLAINTIFF**  
**BEATRICE WANJIRU NDWIGA ..... 4<sup>TH</sup> PLAINTIFF**  
**JANET WANJIRA KATHURI ..... 5<sup>TH</sup> PLAINTIFF**  
**SELINA WATHITHA NDWIGA ..... 6<sup>TH</sup> PLAINTIFF**  
**MARY WANJIKU KARIITHI ..... 7<sup>TH</sup> PLAINTIFF**

**AND**

**NANCY KARIUKO NDWIGA ..... DEFENDANT**

**RULING**

1. The plaintiffs vide an application dated March 1, 2022 seeks the following orders;
  - a. The court be pleased to issue temporary stay orders on the execution of the judgement and decree issued on February 18, 2022 pending the hearing and determination of the application.
  - b. The court be pleased to issue temporary stay orders on the execution of the judgement and decree issued on February 18, 2022 pending the hearing and determination of the appeal.
  - c. Costs of the application.
2. The application is supported by the affidavit of Purity Kabari who deposes that they have already preferred an appeal against the judgement of the court. The applicant further deposes that the



defendant has commenced the process of execution which will culminate in their eviction and is therefore imperative that the orders sought are granted.

3. The application is opposed by way of a replying affidavit sworn by the defendant on May 5, 2022 in which she deposed *inter alia* that she has executed the judgment and the parcel is already registered in her name and the application has therefore been overtaken by time.
4. The parties agreed by consent to dispose of the application by way of written submissions. The respondent filed her submissions dated September 29, 2022 on October 4, 2022. The applicant did not file submissions by the time of writing this Ruling. The Respondent's submissions have been considered.

### **Analysis and determination.**

- a. It is not in doubt that judgment in this matter was delivered on February 18, 2022 declaring the defendant to be the sole and absolute owner of land parcel No Baragwe/Thumait/944 and a permanent injunction issued against the plaintiffs from interfering with the suit land. From the annexures to the replying affidavit, the suit parcel of land has already been registered in the defendant's name.
  - b. The purpose of a stay order is to preserve the subject matter of the appeal from being wasted and or transferred during the pendency of the appeal. In short, the purpose is to preserve the status quo.
5. The applicable law for an application of stay of execution is Order 42 Rule 6 which provides as follows;
- 1 No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.
  - 2 No order for stay of execution shall be made under subrule (1) unless
    - i. the Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and;
    - ii. such security as the Court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
6. A perusal of the application together with the annexures thereto and the replying affidavit shows that ownership of the suit parcel of land has since changed hands even before the present application was filed. Since the orders sought has bolded, it would be futile to grant orders in vain.
7. My analysis of the facts and the law in view of the matters stated leads me to one inescapable conclusion that the present application no longer serves any purposes in light of the execution which has already taken place.
8. In the circumstances, the application for stay of execution pending appeal is hereby dismissed and since the parties herein are siblings, I order each party to bear his own Costs.
9. Orders accordingly.



**DATED, READ AND DELIVERED IN THE OPEN COURT/VIRTUALLY AT BUNGOMA THIS  
25<sup>TH</sup> DAY OF MAY, 2023.**

**HON E C CHERONO**

**ELC JUDGE**

**In the presence of;**

- 1. Applicant/Advocate-absent**
- 2. Respondent/Advocate-absent**
- 3. M/S Joy C/A**

