



REPUBLIC OF KENYA



**Njoroge & 2 others v Lesaloi & 5 others (Environment & Land Case  
743 of 2017) [2023] KEELC 17483 (KLR) (18 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17483 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT & LAND CASE 743 OF 2017  
MN GICHERU, J  
MAY 18, 2023  
(FORMELY NAIROBI ELC CASE NO. 514 OF 2013)**

**BETWEEN**

**MOSES CLEMENT MUHIA NJOROGE ..... 1<sup>ST</sup> PLAINTIFF  
JACINTA NYAMBURA MBURU ..... 2<sup>ND</sup> PLAINTIFF  
JAMES NDUNGU KINYANJUI ..... 3<sup>RD</sup> PLAINTIFF**

**AND**

**JANE WAIHERA LESALOI ..... 1<sup>ST</sup> DEFENDANT  
JOSEPH GATHAGU KAGIKA ..... 2<sup>ND</sup> DEFENDANT  
ANDRIAN MURITHI ..... 3<sup>RD</sup> DEFENDANT  
JOHN GITAU KIOI ..... 4<sup>TH</sup> DEFENDANT  
DISTRICT LAND SURVEYOR, KAJIADO ..... 5<sup>TH</sup> DEFENDANT  
DISTRICT LAND REGISTRAR, KAJIADO ..... 6<sup>TH</sup> DEFENDANT**

**RULING**

1. This ruling is on the Notice of Motion dated November 29, 2022. The motion seeks a stay of execution of the judgment and decree issued by this court on November 2, 2022 pending the hearing and determination of an intended appeal.
2. The motion which is brought under Sections 1A, 1B and 3A of the *Civil Procedure Act*, Order 42, Rule 6 (2) of the *Civil Procedure Rules 2010* and other enabling provisions of law is supported by eleven grounds, an affidavit by the first plaintiff dated November 29, 2022 and a number of annexures.



3. The gist of the material filed by the Applicants is that they are in occupation of the suit land being Parcels Numbers Ngong/Ngong/59355, 59356 and 59372 and they are also the registered owners. The process of execution of the decree has started and as a result the intended appeal will be rendered nugatory yet they have an arguable appeal with good chances of success. The suit property has great sentimental value to the Plaintiffs having occupied it for over a decade. They are ready and willing to abide by the terms that the court may set.
4. The motion is opposed by second, third and fourth Defendants who have sworn replying affidavits to the effect that the Plaintiffs are not in occupation of the suit land, have never been in occupation and the nearest they ever came to occupation is when they attempted to put up a perimeter fence on top of the existing live fence.  
  
Secondly, it is deposed that the Applicants have nothing to lose because the judgment of November 2, 2022 ordered that they get a refund of the purchase price from the first Defendant.
5. Counsel for the parties filed written submissions on February 24, 2023 and February 27, 2023.
6. I have carefully considered the notice of motion dated November 29, 2022 in its entirety including the affidavits, grounds, annexures, written submissions and the law cited therein. I find that the motion has no merit for the following reasons.
7. Firstly, at page 17 of judgment dated November 2, 2022, this court found that it is the second, third and fourth Defendants who are in actual occupation of the suit parcels. It cannot therefore be correct to say that the Plaintiffs are in occupation of the suit land.
8. Secondly, the Plaintiffs have nothing to lose because the court ordered that they get a refund of the purchase price from the Defendant. The first Defendant is the only party that would be genuinely aggrieved by the judgment and decree in this case.
9. For the above stated reasons, I dismiss the Notice of Motion dated November 29, 2022 with costs to the Respondents.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 18<sup>TH</sup> DAY OF MAY, 2023.**

**M.N. GICHERU**

**JUDGE**

