



Gikundi & another v Consolidated Bank of Kenya (Environment and Land Appeal 19 of 2023) [2023] KEELC 17446 (KLR) (17 May 2023) (Ruling)

Neutral citation: [2023] KEELC 17446 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL 19 OF 2023**

**CK NZILI, J
MAY 17, 2023**

BETWEEN

GLADYS NTIRINGA GIKUNDI 1ST APPELLANT

ROBERT GIKUNDI 2ND APPELLANT

AND

CONSOLIDATED BANK OF KENYA RESPONDENT

RULING

1. The court is asked to stay the execution of the judgment delivered on February 16, 2023 by the lower court pending hearing and determination of the appeal. The reasons are contained on the face of the application and in the supporting affidavit sworn on March 15, 2023, by Robert Gikundi.
2. It is averred that following the judgment, an appeal was filed on March 17, 2023, which raises arguable points among them whether spousal consent was a necessity before the charge could be registered. She further averred that if execution occurs, that the substratum of the appeal will be changed.
3. Further, the applicants have offered to provide reasonable security should the court require one. In addition, the applicants averred that the decree implied that they have to execute a charge instrument over the suit parcel of land. Since the respondent is possessed with the original title documents, there will be no prejudice suffered if the order sought is granted. The application is not opposed by the respondent despite service on March 24, 2023 and a return of service filed.
4. A party seeking a stay has to apply without delay, demonstrate substantial loss, offer security for the due performance of the decree and lastly, demonstrate that it is in the interest of justice to grant the orders sought.
5. In this appeal, the judgment was delivered on February 16, 2023 while this application was filed on March 17, 2023. The delay of over a month has not been explained. If any execution of the decree



has occurred, the same is not indicated. The status of the land at the filing of the application has not been confirmed. If there are any developments on the land by the applicants, the same has not been demonstrated. The reasons for the charge to be registered have not been stated. How much the respondent has advanced to the appellants and which is due from them has not been explained at all.

6. As regards the substantial loss none has been demonstrated that the suit properties were on the verge of an auction sale. All that is likely to happen once a charge in favor of the respondent is executed, the security for the loan which is owed to the respondent, would be secured. Even though the appellants have offered some security none has been suggested which is commensurate to the outstanding loan of over Kshs 5 million. In the circumstances, I do not think it would be in the interest of justice to grant the orders sought.
7. The application is dismissed with costs. Lower court file to be availed. Mention before the Deputy Registrar on June 8, 2023.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 17TH DAY OF MAY 2023**

In presence of

C.A John Paul

Miss Mwilaria for Oganda for appellant

Arithi for respondent

HON. C.K. NZILI

ELC JUDGE

