



**Kiriinya v Kiriinya (Environment and Land Appeal 85 of 2022)  
[2023] KEELC 17524 (KLR) (17 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17524 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL 85 OF 2022**

**CK NZILI, J**

**MAY 17, 2023**

**BETWEEN**

**JAPHET MURITHI KIRIINYA ..... APPELLANT**

**AND**

**DANIEL GATOBU KIRIINYA ..... RESPONDENT**

**RULING**

1. The court by an application dated February 24, 2023 is asked to stay the execution of a decree dated May 9, 2022 pending the hearing and determination of this appeal. The reasons are contained on the face of the application and the supporting affidavit sworn by Japhet Murithi Kirinya on February 24, 2023. It is averred that the judgment of the primary court was grossly unfair and is untenable since the applicant has lived on the locus in quo for a long time and if evicted, the appeal would be rendered nugatory yet it has a high chance of success.
2. Further, the applicant averred that no prejudice or loss would be occasioned to the respondent if the orders sought were granted. The application is not opposed by the respondent even though it was served and a return of service was filed on March 22, 2023.
3. For a party to be entitled to a stay of execution, the application must be filed without unreasonable delay, substantial loss must be shown, security for the due realization of the decree should the appeal fail must be given and lastly there must be evidence that it would be in the interest of justice to grant the orders sought. See *Butt v Rent Restriction Tribunal* (1979) eKLR, *James Wangalwa v Naliaka Cheseto* (2020) eKLR.
4. In this application, the judgment appealed against was rendered on December 9, 2022. The appeal was filed on December 22, 2022. This application was filed on February 24, 2023. No decree has been attached to show that the process of execution is underway and or that a notice of eviction has been issued. The delay in applying for a stay has not been explained. The nature of developments, the loss



and the damage likely to be suffered have not been demonstrated. In James Wangalwa (supra), the court held that an execution process alone did not amount to substantial loss and that more was required from an applicant to show other vitiating factors which would interfere with the very essential core of the appeal.

5. To this end, the applicant has not said what he has done on the land, which, if evicted, will not be compensatable or would drastically change the substratum of the appeal. The applicant has not also offered any security for costs or the due satisfaction of the decree should the appeal not succeed. The upshot is I find that it is not in the interest of justice to grant the orders sought.
6. For the above the application is dismissed with costs. Lower court file be availed. Mention before the Deputy Registrar on June 8, 2023.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU**

**ON THIS 17<sup>TH</sup> DAY OF MAY 2023**

**In presence of**

C.A John Paul

Mokua for applicant

**HON. C.K. NZILI**

**ELC JUDGE**

