



**Gachoka (Suing as the Administrator of the Estate of the Late
Gachoka Kahawa) v Nduta & another (Environment & Land Case
E003 of 2021) [2023] KEELC 17309 (KLR) (11 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17309 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE E003 OF 2021**

FM NJOROGE, J

MAY 11, 2023

BETWEEN

**TERESIA WANGARI GACHOKA (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE GACHOKA KAHAWA) PLAINTIFF**

AND

SAMUEL NDUNG’U NDUTA 1ST DEFENDANT

WILSON MWATHI NJOROGE 2ND DEFENDANT

RULING

1. I have perused the file record for this case. The plaintiff decree holder has filed an application for orders of eviction dated March 7, 2023 before this court. The defendants on the other hand have not only lodged their own application dated April 6, 2023 seeking the substantive prayer of stay of execution of the judgment and decree in this suit pending the hearing and determination of an application for stay of execution at the Court of Appeal but have also demonstrated they actually have filed such an application for stay at the Court of Appeal. A copy of the said Motion is exhibited in their application before this court being Nakuru Misc. Civil Application No E006 of 2023 and a copy of a letter from the Deputy Registrar dated January 31, 2023 indubitably stamps veracity on that fact by informing both counsel for the parties herein that the Motion before court has been certified as urgent and a timeframe for filing submissions by the parties has been issued, with the parties being informed that they would be notified of the hearing date once fixed.
2. Upon disclosure of the above set of facts, and noting that the application by the plaintiff seeks eviction orders while the Nakuru Civil Application No E006 of 2023 seeks stay of execution, this court herein, deferring to the Consent filed on April 12, 2023 permitting Gori Ombongi & Company Advocates to come on record post-judgment on the defendants’ behalf in the present suit, and deeming it prudent



to order that parties do await the outcome of the stay application at the Appellate Court, issues the following orders:

- a. The plaintiff's Notice of Motion Application dated March 7, 2023 is hereby stayed pending the outcome of Nakuru Civil Application No E006 of 2023;
- b. The defendant's Notice of Motion dated April 6, 2023 is allowed in terms of prayers Nos (b), (c) and (g) thereof;
- c. As the determination of Nakuru Civil Application No E006 of 2023 will write finis to the issue of stay of execution, the rest of the prayers in the defendant's Motion of April 6, 2023 are deemed as spent;
- d. The costs of the defendant's Motion dated April 6, 2023 shall abide by the outcome of the Nakuru Civil Application No E006 of 2023.

It is so ordered.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 11TH DAY OF MAY 2023.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

