



REPUBLIC OF KENYA



**Sagwe & another v Waithira & another (Environment and Land Appeal
3 of 2022) [2023] KEELC 18430 (KLR) (27 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND APPEAL 3 OF 2022
LC KOMINGOI, J
JUNE 27, 2023**

BETWEEN

HARON ONDICHO SAGWE 1ST APPELLANT

VERONICA NYAMOITA MAKORI 2ND APPELLANT

AND

LUCY NANCY WAITHIRA 1ST RESPONDENT

MARY NYAMBURA MBATIA 2ND RESPONDENT

RULING

1. This is the Notice of Motion dated April 20, 2023 brought;
(Under Section 1A, 1B, 3, 3A and 63 (c) and (e) of the *Civil Procedure Act*, Order 50 Rule 1 of the *Civil Procedure Rules, 2010*, Article 159 of the *Constitution* 2010 And all other enabling provisions of the law).
2. It seeks orders;
 1. Spent.
 2. That the court be pleased to direct the Appellants to deposit Kshs 500,000/= being Security for Costs in the Court's Bank Account No pending the hearing and determination of this Application and or other direction and orders of the Court.
 3. That the Honourable Court be pleased to issue other orders/directions that it may deem fit to grant.
3. The grounds are on the face of the Notice of Motion and are set out in paragraphs 1 to 9.



4. The Application is supported by the affidavit of Veronica Nyamoita Makori, the 2nd appellant, sworn on the April 20, 2023.
5. The application is opposed. There is a Replying Affidavit sworn by Mary Nyambura Mbatia, the 2nd Respondent, sworn on the June 7, 2023.
6. When the matter came up for hearing on June 13, 2023, counsel informed the court that they were relying on the affidavit in support and the Replying affidavit respectively.
7. I have considered the notice of motion the grounds and the Affidavit in support.
I have also considered the response thereto. The issue for determination is whether the application is merited.
8. This court while considering the application for stay of execution pending Appeal in it's ruling dated March 23, 2023 granted the following orders;

' That there be stay of execution of the judgement and decree issued on October 27, 2022 by L Gicheha (Chief Magistrate) and all consequential orders pending the hearing and determination of the Appeal on condition that the Appellants do deposit Kshs 500,000/= as security for costs in a joint interest earning account in the name of their counsel and that of the Respondents within thirty (30) days from the date of this ruling. In default, the order of Stay of execution shall automatically lapse'
9. It is not in dispute that the orders granted on March 23, 2023 lapsed automatically on April 23, 2023.
10. As things stands there are no orders capable of extension.
11. I find no merit in this application and the same is dismissed with costs to the Respondents.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 27TH DAY OF JUNE 2023.

L. KOMINGOI

JUDGE

IN THE PRESENCE OF:

Ms Oduru for Mr. Karisa for the Appellant.

Ms. Kiema for Mr. Kaberia for the Respondents.

Court Assistant - Mutisya*

