



**Muriithi & 2 others v Muthike & 2 others (Environment and Land
Appeal 21 of 2019) [2023] KEELC 18103 (KLR) (21 June 2023) (Ruling)**

Neutral citation: [2023] KEELC 18103 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL 21 OF 2019**

JM MUTUNGI, J

JUNE 21, 2023

BETWEEN

ROBERT NDERI MURIITHI 1ST APPELLANT

ANTONY KARIUKI MURIITHI 2ND APPELLANT

JEREMIAH MAGANJO MURIITHI 3RD APPELLANT

AND

FLORA NJERI MUTHIKE 1ST RESPONDENT

NANCY WANGUI NGARI 2ND RESPONDENT

JANE MUTHONI ZACHARIA 3RD RESPONDENT

RULING

1. The Appellant by a Notice of Motion application dated October 6, 2021 sought to have all further proceedings in SPMC Wang'uru ELC Case No. 6 of 2019 stayed pending the hearing and determination of the instant Appeal. The application was premised on the grounds set out on the body of the application.
2. Before the Lower Court, the Appellant raised a Preliminary Objection that the subordinate Court lacked the jurisdiction to deal with the matter before it as jurisdiction was vested in the Scheme Advisory Committee of the Mwea Irrigation Scheme under the provisions of the *Irrigation Act*. The appellant contended the Mwea Irrigation Scheme was not a party in the proceedings and that the Subordinate Court, could not properly adjudicate over the dispute as it lacked jurisdiction.
3. The subordinate court dismissed the preliminary objection vide a Ruling made on November 12, 2019. The appellant through an application dated March 10, 2020 before the trial court sought stay of proceedings of the lower court proceedings and on September 21, 2021, the lower court granted



conditional stay of the proceedings before the lower court upon the appellant depositing a sum of Kshs 300,000/- within 14 days in a joint account of both Counsel for the parties. The appellant considered the terms attaching to the order for stay oppressive and consequently decided to make the present application for stay of proceedings before the lower court in this court.

4. The respondents opposed the appellants application through a replying affidavit sworn by Flora Njeri Muthike the 1st respondent on November 10, 2021. The respondents contended the appellants had made a similar application before the trial court and had been granted stay on condition that they deposit security for mesne profit which they failed to satisfy. the respondents contended that the appellants did not appeal against the order for conditional stay and argued that this court lacked the jurisdiction to entertain an application that was similar to the one that had already been determined by the trial court.
5. The parties canvassed the application dated 6/10/2021 by way of written submissions. The applicant's submissions dated December 1, 2021 were filed on December 3, 2021. The Respondents submissions dated November 30, 2021 were filed on the same date. I have carefully considered the application and the submissions of the parties. It is clear the appeal before the court relates to the Ruling delivered by the trial court dismissing the preliminary objection that the trial court lacked the jurisdiction to handle the matter before it. That Ruling was delivered on November 12, 2019. The Appellant filed a Memorandum of Appeal on December 10, 2019. Other than the extracted order affirming the preliminary objection dated February 18, 2019 was dismissed with costs to the plaintiffs, the copy of the Ruling and/or the pleadings were not annexed. The record of Appeal has equally not been filed. In the premises on the basis of the material now before the court, it is not possible to determine what the issues in the suit before the lower court were and/or affirm what issues were considered and determined in the Ruling delivered on November 12, 2019.
6. Admittedly, the Appellants following the dismissal of their preliminary objection, applied for stay of proceedings of the matter before the subordinate court and the trial court duly granted stay of the proceedings albeit on the condition that the appellants do within a period of 14 days from the date of the Ruling delivered on September 21, 2021 deposit the sum of Kshs 300,000/- in a joint account of both Counsels on record for the parties. There was no compliance with that condition and instead the appellants filed the present application before this court.
7. The present application does not seek a review and/or variation of the terms of the conditional stay of proceedings granted by the trial court. The application is a fresh application for stay of proceedings before the lower court. The lower court has already decided and granted stay of proceedings on terms which the appellants have failed to satisfy. The application for stay of proceedings having been considered and determined by the lower court, this court lacks the jurisdiction to consider a similar application. the present application is *res judicata* and is brought in abuse of the court process.
8. I accordingly find no merit in the Notice of Motion dated October 6, 2021. I dismiss the same with costs to the Respondents.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT KERUGOYA THIS 21ST JUNE 2023.

J. M. MUTUNGI

JUDGE

