



**Malamu v Murimi (Environment & Land Case E014 of 2022)
[2023] KEELC 19318 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 19318 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE E014 OF 2022**

**AK BOR, J
JULY 17, 2023**

BETWEEN

DAVID MULWA MALAMU PLAINTIFF

AND

SYLVANUS KINYUA MURIMI DEFENDANT

RULING

1. The appellant brought the application dated November 24, 2022 seeking an order to stay execution of the judgment and decree issued on October 4, 2022 in Nanyuki Chief Magistrate's ELC Case No 194 of 2018 pending hearing and determination of the application. The application was made on the ground that the appellant was the bona fide purchaser of Nanyuki Municipality Block 6/215 which was previously known as Unsurveyed Residential plot No 31 Nanyuki Municipality based on a promise to transfer the land after the conclusion of a succession matter. The appellant averred that the 30 days stay of execution granted by the Magistrate's Court had elapsed and he stood to suffer loss and damage if the orders of stay were not granted.
2. The appellant swore the affidavit in support of the application and attached a copy of the sale agreement he entered into with Christina Gathoni Murimi for the sale of Nanyuki Municipality/Block 6/215. He averred that he was aggrieved by the decision of learned magistrate and had preferred an appeal against that decision. Further, that he was apprehensive that his appeal may be rendered an academic exercise if execution proceeds.
3. The application was argued orally on July 12, 2023. Mr Kiget who appeared for the appellant told the court that the application was not opposed. He urged that if the orders sought were not granted the suit property might be disposed of or wasted. He added that the appellant was in possession of the title document and that it would be a lengthy process to effect a transfer. He submitted that the appellant was ready to adhere to conditions set by the court and was prepared to offer security by depositing the title or cash in the sum of Kshs 500,000/= in court.



4. Mr Mwangi Kariuki opposed the application and urged that no materials had been placed before the court to warrant the grant of an order to stay execution. He submitted that the arguability of an appeal and probability of success of the appeal would depend on the judgment which in this case was not placed before the court for the court to weigh these two important issues and make its determination. He added that the appellant had failed to demonstrate that there was something which could be stayed. Further, that the appellant had not established whether the subject matter was still in existence or not before seeking to stray execution of the judgment. He urged the court to dismiss the application.
5. In response, Mr Kiget stated that the respondent was to have given facts relating to the status of the suit property which he had failed to do. He urged the court to take judicial notice of the judgment delivered by the learned magistrate and added that it was through oversight that they failed to attach it to the application.
6. The issue for determination is whether the court should stay of execution of the decree emanating from the judgment delivered by the magistrate's court. Without the judgment, it is difficult for the court to determine whether substantial loss may result to the appellant if the stay is not granted. This is the basis for granting stay of execution of a judgment. There is also the question of delay, although the court notes that parties did not address this point.
7. The application dated November 24, 2022 lacks merit and is dismissed with costs to the respondent.

DELIVERED VIRTUALLY AT NANYUKI THIS 17TH DAY OF JULY 2023.

K. BOR

JUDGE

In the presence of:

Mr. Mwangi Kariuki for the Respondent

Ms. Stella Gakii – Court Assistant

No appearance for the Appellant

