



**Njoroge v Gichumu (Environment and Land Appeal E15 of 2023)  
[2023] KEELC 18704 (KLR) (17 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18704 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
ENVIRONMENT AND LAND APPEAL E15 OF 2023**

**FM NJOROGE, J  
JULY 17, 2023**

**BETWEEN**

**SUSAN WANJIKU NJOROGE ..... PLAINTIFF**

**AND**

**MARGARET NJERI GICHUMU ..... DEFENDANT**

**RULING**

1. The Plaintiff filed a Notice of Motion dated May 12, 2023 under section 1A 1B 3A 6, 79G of the [CPA](#), Orders 42 rule 6, 43 rule 1 of the [CPR](#) seeking a stay of proceedings ruling and order of the lower court in Nakuru CMC No E168 of 2022 Margaret Njeri Gichumu Vs Susan Wanjiku Njoroge (hereinafter “the lower court case”) pending the hearing and determination of the present appeal. She also sought an injunction to restrain the respondents from interfering with LR NO Miti Mingi /Mbaruk Block 11/793 (hereinafter “the suit land”) in any manner pending appeal.
2. The background to her application is that the respondent lodged an application for injunction against her dated November 2, 2022 and ex parte orders were issued on November 15, 22 on which date they were also served upon her, but she asserts that the application was not similarly served. So she filed her own application to discharge the said orders due to alleged concealment of material facts by the respondent herein which application was dismissed by the trial court on 25/4/2023. She avers that the proceedings in the lower court should not run parallel to the appeal herein and so a stay order ought to issue.
3. The application is opposed by the respondent who filed her affidavit on May 18, 2023 stating that she is the registered proprietor of the suit land and has never agreed with the appellant either verbally or in writing to exchange the suit land with any other land; that she is not a director of the school known as Luther King Junior and neither is Jeremiah Mwangi Maina her alleged ex-husband and that notwithstanding, that they never agreed to surrender the suit property to the appellant; that she and Jeremiah only had a business relationship in another enterprise, a hardware which is currently also



under litigation; that it is Jeremiah that the appellant entered into a land exchange agreement with on July 19, 2019; that the appellant surrendered her plot Kiambogo/Kiambogo Block 2/13887 in favour of plot no Gilgil Eburru 1082; that the appellant developed the suit land without planning permission and despite the warnings from the respondent; that the appellant had responded to the application in the lower court that issued injunctive orders; that the appellant's application in the lower court was to facilitate her entry into the new house which she completed despite the injunction; that some documents relied on by the appellant in the application were not used in the lower court which is not proper; that the prayers for stay of proceedings are misplaced as the injunctive orders were meant to preserve the suit property and to stop the appellant from moving into the house she had allegedly illegally constructed on the premises and also to bar the changing of the character of the suit land.

4. The appellant and the respondent complied with the order that the application be disposed of by way of written submissions, which the appellant filed on May 22, 2023 and the respondent on May 25, 2023, and I have had regard for those submissions in preparing the present ruling.
5. The appellant relies on Order 42 rule 6(1) and 6(6) of the CPR and section 6 of the CPA which provides for stay of execution and stay of proceedings to be granted by the court after consideration of several factors. She also relies on *Christopher Ndolo Mutuku & Another V Stanbic CFC Bank Ltd* 2015 v eKLR to state that she deserves a stay order to avoid parallel proceedings on the same subject matter both here in this court and in the lower court. She cites the case of *Patricia Njeri & 3 Others V the National Museum of Kenya* 2004 eKLR and *Vincent Orinda Nyambane & Another V Daniel Nyangaresi Orinda & Another* 2021 eKLR for the principles to be applied while considering an application for injunction pending appeal. She states that the only task she has is that of demonstrating an arguable appeal exists rather than of demonstrating there is a prima facie case and pleads with the court that the prayers sought herein are for preserving the suit property pending appeal and that the balance of convenience tilts in her favour. She states that she may be evicted from the suit property which she has fenced and built on, and that she had established a prima facie case in the lower court. She seeks that she be awarded costs.
6. The respondent on the other hand submits that upon sufficient evidence in the lower court, the trial magistrate gave conservatory orders pending the hearing and determination of the suit; that the appellant has based her reliance on an agreement the respondent is not a party to and the suit in the lower court ought to be heard expeditiously and no stay orders ought to be given. She relies on *Global; Tours & Travels Ltd* NBI HC WC No 43 Of 2000 and *Kenya Wildlife Service V James Mutembei* 2019 eKLR. She states that the appeal and application herein are merely a ruse by the appellant to avoid contempt proceedings, the appellant having further constructed the house on the suit land in disobedience of a court order; that the appellant has not demonstrated how she would suffer if the suit in the lower court was allowed to proceed to hearing and determination on merit.
7. The appeal has already been filed in this court. The principal orders of the lower court on the appellant's application were to the effect that the appellant should cease any further construction and development of the suit land pending the hearing and determination of the suit and that parties should proceed to prepare themselves for the hearing. That is the equivalent, in this court's view, of the partial maintenance of the status quo by the appellant pending the finalization of the suit. Notably, action on the part of the respondent was not made the subject of the lower court's orders to deter the respondent herein from interfering with the suit land pending the hearing and determination of the suit hence the appellant's present apprehensions.
8. However, it is the respondent who sued the appellant in the court below and when she opted not to take the law in her own hands, she must be taken to have taken up a firm commitment to a civilized course of seeking justice from which hopefully she will not depart till the end of the suit. I do not see



how the injunction order issued by the trial court would adversely affect the appellant especially in the light of the fact that the title to the suit land is still registered in the name of the respondent and I think that not knowing the eventual outcome of the suit, it would be in her own interest to comply with the order.

9. The consequence of the foregoing is that I find no error or mistake in the substance of the order of the trial magistrate save that it would appear that the lower court disposed of the two applications before it simultaneously without notice to the parties. Instead of seeking her own injunctive orders, the appellant had gone before the trial court with her own application seeking to merely set aside the injunctive orders made by the court ex-parte. The court declined that proposal to set aside and confirmed the interim orders of injunction, stating that the application filed by the respondent herein had already been overtaken by events. Of course a court can go out of its way and maintain the status quo with regard to both parties, but no litigant should presume always that a court will go out of its way to save him or her. It behoves all litigants to state their case as expressly as possible in all situations to enable the court deal with it.
10. On the issue of simultaneous determination of two motions, I must state here that when a court desires to hear two applications at once it ought to inform the parties of that intention so that they may address both applications failure to which the issue of whether the appellant was heard in substance in both applications before the ruling ought to arise in the present appeal. I find that there would have been a triable issue in the appeal had that ground been raised, but I see no such ground in the memorandum of appeal yet it is the sole ground that would have made the appeal have merit.
11. In the circumstances of this litigation, I find that the injunction application now filed before this court ought to have been lodged first in the lower court by the appellant and she ought to have come to this court only by way of appeal against denial of those orders, if it had happened. That was not the case because there was no such application hence granting the injunction proposed herein would amount to entertaining it in the first instance and that would amount to condoning abuse of process by the appellant which this court is not inclined to do. My finding is that both the application dated May 12, 2023 and the entire appeal filed by the appellant lack merit and they are hereby struck out with costs to the respondent.

**DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 17TH DAY OF JULY, 2023.**

**MWANGI NJOROGE**

**JUDGE, ELC, NAKURU**

