



REPUBLIC OF KENYA



**Imathiu & 4 others v Land Adjudication and Settlement Officer – Uringu
1 Adjudication Section & 5 others; Ratanya (Interested Party) (Petition
5 of 2020) [2023] KEELC 20348 (KLR) (27 September 2023) (Ruling)**

Neutral citation: [2023] KEELC 20348 (KLR)

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT MERU

PETITION 5 OF 2020

CK NZILI, J

SEPTEMBER 27, 2023

**IN THE MATTER OF ALLEGED CONTRAVENTION OF RIGHTS AND
FREEDOMS UNDER ARTICLE 40 OF THE CONSTITUTION OF
KENYA**

AND

**IN THE MATTER OF ARTICLES 22, 23, AND 165 OF THE
CONSTITUTION OF KENYA**

**IN THE MATTER OF SECTIONS 28 AND 29 OF THE LAND
ADJUDICATION ACT CAP 284 LAWS OF KENYA**

AND

**IN THE MATTER OF SECTION 26, 76 AND 80 OF THE LAND
REGISTRATION ACT**

AND

IN THE MATTER OF SECTION 7 OF THE LAND ACT NO. 6 OF 2012

IN THE MATTER OF ENVIRONMENT AND LAND ACT 2011

BETWEEN

JOSEPH MURITHI IMATHIU 1ST PETITIONER

ALDOSON BK KARITHO 2ND PETITIONER

STEPHEN KABERIA 3RD PETITIONER

ROSE MWENDWA MUGAMBI 4TH PETITIONER

JOSHUA MURIIRA MITU 5TH PETITIONER



AND

LAND ADJUDICATION AND SETTLEMENT OFFICER – URINGU 1
ADJUDICATION SECTION 1ST RESPONDENT
DISTRICT LAND REGISTRAR – TIGANIA DISTRICTS 2ND RESPONDENT
DIRECTOR OF LAND ADJUDICATION 3RD RESPONDENT
DIRECTOR OF SURVEYS 4TH RESPONDENT
CHIEF LAND REGISTRAR 5TH RESPONDENT
ATTORNEY GENERAL 6TH RESPONDENT

AND

DOMIZIANO M'CHOKERA RATANYA INTERESTED PARTY

RULING

1. By an application dated May 15, 2023, the court is asked to:
 - a. Allow the law firm of Hillary Sandi & Co Advocates to come on record for the applicant in place of the firm of B.G Kariuki & Co Advocates.
 - b. Stay execution of the judgment or decree issued on February 22, 2023 pending hearing and determination of the Court of Appeal Nyeri No E073 of 2023.
2. The application is based on the grounds on its face and the supporting affidavit of Domiziano M'Chokera Ratanya sworn on May 15, 2023. The applicant avers that the suit land is registered under his name as per the confirmation letter attached to his deposition as annexure marked DMR "1" and has preferred an appeal to this court's judgment as per a memorandum of appeal attached as annexure marked DMR "3". The applicant states that the petitioners were implementing the court's decision, which would prejudice his appeal and subject him to suffering substantial loss and damage if a stay order was not granted. The applicant further states that he would preserve the subject land as security if the court allowed his application.
3. The application is opposed by a replying affidavit of Joseph Murithi Mathiu sworn on April 24, 2023 on behalf of the respondents. The gist of the opposition is that the application was full of falsehood filed three months after the delivery of judgment; it was a delaying tactic and that the memorandum of appeal has never been served; it offends Order 9 Rule 9 of the *Civil Procedure Rules*; the appeal lacks merits; no substantial loss or damage has been demonstrated; the applicant has never been on the suit land going by the site visit report, there was nothing to stay since the decree was executed as per the timelines set; the applicant can be compensated by way of damages; the respondents' parcel of land was in a separate district and occupied; the land proposed as security cannot be used as that would be impractical; there was a similar matter namely Meru JR No 29 of 2008, whose orders the applicant has blatantly disregarded or ignored to the effect that the A/R Objection No 832 be heard afresh and lastly that the application was misconceived and should be dismissed.
4. For a party to be entitled to stay of execution under Order 42 Rule 6 of the *Civil Procedure Rules*, four key parameters have to be met, namely; the filing of the application within reasonable time, demonstration of substantial loss or damage; an indication that it was in the interest of justice to grant



the orders sought and lastly; that the applicant has offered security for the due realization of the decree should the appeal not succeed.

5. In *Kenya Shell Ltd vs Kibiru & another* (1986) KLR 410, the court observed that substantial loss was the cornerstone of granting a stay of execution. In *James Wangalwa vs Agnes Cheseto* (2012) eKLR the court said that an applicant has to demonstrate with specific details precisely what he would suffer other than merely stating that the process of execution has been put into motion.
6. In *NIC Bank Ltd vs Aquinas Francis Wasike and another* (2006) eKLR, the court said that the legal duty was on the applicant to prove the allegations that his appeal would be rendered nugatory. The court in *Arun C Sharma vs Ashana Raikundalia T/A Raikundalia & Co Advocate and others* (2014) eKLR, stated that the purpose of security was to guarantee the due performance of such decree or order and was not aimed at punishing the judgment debtor since in civil practice, judgment was like a debt.
7. Further, in *Butt vs Rent Restriction Tribunal* (1982) KLR 417, the court observed that the power to grant or refuse an application for stay was discretionary and exercised in such way as to prevent appeal being rendered nugatory so long as there were reasonable grounds or exceptional circumstances for so granting it.
8. In *Samvir Trustee Ltd vs Guardian Bank Limited* (2007) eKLR where the court observed that the yardstick was for the court to balance or weigh the scales of justice by ensuring that an appeal was not rendered nugatory, while at the same time ensuring that a successful party was not impeded from the enjoyment of the fruits of his judgment, which has defined his rights, with definitive conclusion. On the aspect of delay, the court observed that there was no yardstick on what amounted to inordinate delay, but it depended on the circumstances of each case, for even a one-day delay could be inordinate.
9. Applying the preceding case law to the facts of this application, the decree by the court was issued on April 20, 2023. The notice of appeal was signed on February 28, 2023. The court had issued specific reliefs against the 1st - 6th respondents to the petition as regards the suit parcel of land. The applicant has not explained in the supporting affidavit if there have been changes to both the registry index maps, the green card, and the adjudication registers. No official searches have been attached to the supporting affidavit indicating how far the decree has been implemented on both on paper and on the ground.
10. It was not enough to allege substantial loss or the likelihood of the appeal being rendered nugatory. Without specific details or particulars of the status of the suit properties, the court is unable to establish what grave loss and damage the applicant stands to suffer. Further, the applicant has not indicated if he was summoned by the 1st – 6th respondents regarding the execution or implementation of the decree. Additionally, since the filing of the appeal, there is no indication of why the applicant has come to this court after three months or so and the reasons for the delay.
11. As regards the security, the applicant has not offered to surrender his title documents as a condition precedent for granting the stay. The gist of the petition was based on an alleged violation of the *Constitution* and statutory law, in the manner that the adjudication process was undertaken. Therefore, in as much as a party seeks for a stay of execution, it must be alive to the issues the court which passed the decree determined and reached definite findings on the respective rights and duties of the combatants. The court cannot sit on an appeal of those issues under the exercise of its discretion under Order 42 Rule 6 of the *Civil Procedure Rules*.
12. The upshot is that I find no merits in this application and proceed to dismiss it with costs.

Orders accordingly.



**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON
THIS 27TH DAY OF SEPTEMBER 2023**

In presence of

C.A Kananu

No appearance

HON. CK NZILI

ELC JUDGE

