



**Achoki v Nyaroo (Environment and Land Appeal E013 of 2022)
[2023] KEELC 21850 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21850 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT AND LAND APPEAL E013 OF 2022**

**JM KAMAU, J
NOVEMBER 21, 2023**

BETWEEN

STEVE BOSIRE ACHOKI APPELLANT

AND

JULIUS ONDIEKI NYAROO RESPONDENT

RULING

1. Judgment in this case was delivered on 25/7/2023 in the following terms
 - a. A declaration be and is hereby issued that the plaintiff be registered the owner of all the parcels of land known as LR. No West Mugirango/Siamani.3032 to hold the same in trust for the Estate of the late Kiaombe Omanwa Ogoi.
 - b. An order of eviction be and is hereby issue evicting the Defendant , his Agents and /or servants from LR No West Mugirango/Simanion/ 3032.
 - c. A permanent injunction be and is hereby issued restraining the Defendant by either himself, agents servants and /or anyone claiming under the Defendant from entering into, re-entering, trespassing onto, building structures, cultivating, converting the suit land, abusing the Plaintiff's rights, interfering with and/or in any other manner dealing with the suit property that is, LR. No. West Mugirango/Siamani/3032.
 - d. And in order to avoid confusion, it is hereby further ordered that Title No. LR West Mugirango/Siamani/6966 be and is hereby cancelled forthwith.
2. A certificate of costs by the Deputy Registrar Honourable Cyprian W. Waswa was issued on 17/8/2023 in the sum of Kshs.846,168 after taxation in favour of the applicant's Advocates against their client being party and party costs. On 16/8/2023 the respondent filed an Application for the following orders: -



1. That service of this application be dispensed with in the first instance and the same certified urgent in respect to prayer 2.
2. That there be a stay of execution of the decree and judgment delivered on the 25th day of July, 2023 pending the hearing of this Application inter-partes.
3. That there be a stay of execution of the Decree and Judgment delivered herein on the 25th day of July, 2023 pending the hearing and final determination of the reference on the appellant's bill of costs dated 2nd day of August, 2023.
4. That there be a stay of execution of the decree and judgment delivered herein on the 25th day of July, 2023 pending the hearing and final determination of the intended appeal by the respondent.
5. That the costs of this application be to the respondent/applicant
Which Application was based on the grounds; -
 1. That Judgment in this appeal was delivered on the 25th day of July, 2023 in favour of the appellant.
 2. That the respondent /applicant herein was dissatisfied with the said judgment and he intends to appeal the judgment wholly.
 3. That the respondent/applicant has lodged a notice of appeal in this registry.
 4. That the ruling on the appellants costs was delivered on the 17th day of July, 2023.
 5. That the respondent /applicant is dissatisfied with the Ruling and he has filed a reference on the same.
 6. That if the orders sought herein are not granted the appellant /respondent herein may proceed to execute the Decree and judgment herein at the detriment of the Respondent/Applicant.
 7. That it is in the interest of justice that the orders sought herein be granted.
3. The respondent deponed that the applicant's bill of costs dated 2/8/2023 was to come up for ruling the following day. He therefore wished to arrest the delivery of the same since he had not filed any response thereto. On 15/8/2023 the Respondent withdrew the Notice of Appeal lodged in this Registry on 3/8/2023 and filed another one on 23/8/2023 in what seemed to suggest that the Respondent had already withdrawn the earlier Application of arresting the delivery of the Ruling on costs. On 21/8/2023 the Respondent filed another
4. Application for stay of execution of the Decree pending the Hearing and final determination of the intended Appeal by the Respondent. He deponed in his supporting Affidavit sworn on 17/8/2023 that execution of the Decree would be to his detriment. The Appellant opposed the Application vide his grounds of opposition dated and filed in court on 30/8/2023 by stating that the Application was made in a vacuum since there is no Appeal filed against the Judgment of the court and that therefore the same is misconceived, premature and vexatious and should therefore be struck out with costs. Both parties argued the Application by way of filing and highlighting their written submissions which I have taken time to consider. In the Respondents' submission they have in good faith indicated that they are ready to deposit the Title Deed in respect of the suit property, the subject of the Decree and Appeal in court as security in case the court may so order.



5. The Appellant on the other hand argues that the Application cannot be granted since the Notice of Appeal was filed after 30 days of the delivery of the Judgment.
6. I have considered the written submissions of both parties before retiring to write this Ruling and I am not persuaded that the Application has merit. First, there is no timely Notice of Appeal on record. There is no Memorandum of Appeal nor draft attached time for filing Appeal has already expired. The Application is therefore unmeritorious. The same is consequently disallowed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 21ST DAY OF NOVEMBER 2023

MUGO KAMAU

JUDGE

In the Presence of:-

Mr. Nyamweya for the Appellant

Mr. Anyumba for the Respondent

Respondent present

