



**Gikera v Solomon (Environment and Land Appeal E044 of 2023)  
[2023] KEELC 22058 (KLR) (21 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 22058 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E044 OF 2023  
BM EBOSO, J  
NOVEMBER 21, 2023**

**BETWEEN**

**AHMED CHEGE GIKERA ..... APPELLANT**

**AND**

**LUCY WANJIRU SOLOMON ..... RESPONDENT**

*(Being an Appeal against the Ruling of Hon. M W Kurumbu (Mrs) Principal Magistrate,  
delivered on 20/4/2023 in Thika Chief Magistrate Court MCL & E Case No. 18 of 2014)*

**RULING**

1. This appeal challenges the Judgment rendered on 20/4/2023 by Hon M W Kurumbu (Mrs) PM in Thika Chief Magistrate Court Land and Environment Case No 18 of 2014. The dispute in the trial court revolved around the question of ownership of land parcel number Ruiru/Kiu Block 2/4793 [referred to in this ruling as “the suit Property”]. The trial court made a finding to the effect that the suit property belongs to Lucy Wanjiru Solomon [the respondent]. Further, the trial court decreed Ahmed Chege Gikera [the appellant] to remove all his structures from the suit land within 90 days and in default, he be evicted from the land.
2. Aggrieved by the findings and disposal orders of the trial court, the appellant brought this appeal through a memorandum of appeal dated 18/5/2023, inviting this court to set aside the Judgment and disposal orders of the trial court. He itemized various grounds of appeal. Subsequent to that, the appellant brought a notice of motion dated 29/6/2023, seeking an order of stay of execution and/or an order of status quo pending the hearing and determination of the appeal. The said application is the subject of this ruling.
3. The application was supported with the appellant’s affidavit sworn on 29/6/2023. The respondent opposed the application through a replying affidavit sworn on 28/7/2023.



4. On 3/7/2023, this court issued an interim order of stay of execution and directed parties to file and exchange brief written submissions on the application. When the application subsequently came up for interpartes hearing on 19/9/2023, counsel for the appellant/ applicant informed the court that he had not served the applicant's written submissions. He urged the court to render a determination without looking at or considering the appellant's unserved written submissions. On her part, the respondent had filed and served written submissions dated 16/8/2023.
5. The case of the appellant is that he stands to suffer great prejudice as his property is at the risk of being demolished, adding that he stands to be evicted from the suit property. The appellant said nothing about the requirement for security for the ultimate due satisfaction of the decree of the court.
6. On her part, the respondent contends that she has waited for justice for almost 10 years, adding that the appellant took inordinately long to bring the application. She faults the appellant for saying nothing about the security he is willing to offer, notwithstanding the fact that he has been served with the decree and the certificate of costs. The respondent further contends that the appellant has failed to demonstrate to this court the substantial loss he will suffer if the stay order is not granted. Further, the respondent contends that in April 2014, the trial court granted an interlocutory injunction barring the appellant against entering or constructing on the suit land. She urged the court to dismiss the application.
7. The court has considered the grounds set out in the application and in the supporting affidavit, alongside the respondent's replying affidavit and written submissions. The single question to be determined in this ruling is whether the appellant/applicant has satisfied the criteria for grant of an order of stay of execution pending disposal of an appeal in a first appellate court.
8. The criteria for grant of an order of stay of execution pending disposal of an appeal in this court is set out in Order 42 rule 6 (2) of the [Civil Procedure Rules](#) which provides as follows:
  - “(2) No order for stay of execution shall be made under subrule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
9. Has the appellant satisfied the above criteria? It does emerge that during the pendency of the suit in the trial court, the appellant was restrained by the trial court against entering the suit land or constructing on the suit land pending the hearing and determination of the suit. There is no evidence to suggest that the interlocutory order of the trial court was vacated during the pendency of the suit. The question of the appellant being evicted from the suit land at this point does not therefore arise. The only loss that the appellant may be exposed to is the loss resulting from demolition of the perimeter wall which she had started constructing.
10. On security for the due satisfaction of the decree of the court, the appellant has elected to keep quiet. This is despite the fact that the appellant was decreed to pay general damages of Kshs 100,000 and costs of the suit and that the trial court has assessed party and party costs at Kshs 180,400.
11. On the need to bring the application timeously, the court notes that the application was brought on 30/6/2023, a period of about 70 days from the date of delivery of the impugned judgment. Taking into



account the fact that, at the behest of the appellant, the trial court granted a stay for 90 days, I do not think there was urgent need to vex this court with another application for stay during the subsistence of the stay order issued by the trial court. I do not therefore find merit in the respondent's contention that there was inordinate delay on part of the appellant.

12. Taking into account the fact that the record of appeal has been filed and all that is awaited is the filing of written submissions and further; taking into account the above analysis on the criteria for grant of an order of stay of execution pending disposal of an appeal, I would grant conditional stay limited to preservation of the perimeter wall and any other existing structure on the land on the following terms:
  - a. Subject to the appellant depositing in this court the sum of Kshs 280,400 [the equivalent of the decreed general damages together with the assessed costs] within 30 days, there shall be a stay of execution of the decree in Thika CMC MCL & E Case No. 18 of 2014 in relation to demolition of the perimeter wall together with any other structure the appellant may have erected on land parcel number Ruiru/Kiu Block 2/4793.
  - b. The order of stay of execution shall lapse upon disposal of this appeal.
  - c. Costs shall be in the appeal

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 21ST DAY OF NOVEMBER 2023**

**B M EBOSO**

**JUDGE**

In the presence of:

Mrs Ngala for the Respondent

Court Assistant: Hinga/Osodo

