



Karanja (Suing as a personal representative of the Estate of John Karanja Mathaga) v Gichuhi (Suing as a personal representative of the Estate of Godfrey Njogu Gichuhi) (Environment and Land Appeal 46 of 2023) [2023] KEELC 22118 (KLR) (16 November 2023) (Ruling)

Neutral citation: [2023] KEELC 22118 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL 46 OF 2023
BM EBOSO, J
NOVEMBER 16, 2023**

BETWEEN

**STANLEY MBURU KARANJA APPELLANT
SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF JOHN
KARANJA MATHAGA**

AND

**SERAH WANJIKU GICHUHI RESPONDENT
SUING AS A PERSONAL REPRESENTATIVE OF THE ESTATE OF GODFREY
NJOGU GICHUHI**

RULING

1. What falls for determination in this ruling is the appellant's notice of motion erroneously expressly as dated 18/5/2021, through which the appellant seeks an order of stay of execution of the Judgment rendered in Kikuyu SPMC Civil Case No. 143 of 2015, pending hearing and determination of this appeal. The application is supported by two affidavits, both sworn by the appellant on 18/5/2023 and 26/6/2023 respectively.
2. The appellant's case is that he is the actual owner of land parcel number Maguga/Kahuhu/T.37 [referred to in this ruling as "the suit property"] and that he and his family have been in quiet possession of the suit property for more than 45 years, commencing in 1970. The appellant adds that he is aggrieved by the impugned decision of the trial court, contending that the appeal has overwhelming chances of success. He further contends that unless the prayer sought is granted, he will suffer substantially as he stands to be evicted from the suit property, adding that eviction will render the appeal nugatory. He adds that he stands to suffer irreparable financial loss, loss of reputation, psychological distress, inconvenience and trauma if the respondent were to evict him from the suit



property. The appellant further contends that the application was brought without undue delay, Judgment having been delivered on 25/4/2023.

3. The respondent opposes the application through her replying affidavit sworn on 16/6/2023. She contends that the court should not extend an illegality and trespass by the appellant. She adds that the appellant's claim that he and his family have lived on the suit property since 1970 is false because her son lived on the suit property until his death. She adds that it was after her son's death that the appellant built an old mabati structure at the boundary of the suit property and started cultivating the land. The respondent argues that the appeal has no chance of success and that the appellant won't suffer irreparable loss given that the land does not belong to him and he never made a claim of adverse possession.
4. The application was canvassed through written submissions. The appellant filed written submissions dated 26/6/2023 while the respondent filed written submissions dated 10/7/2023.
5. I have considered the application, the response to the application, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence. I will be brief in my analysis and determination. The single question to be determined in this ruling is whether the criteria for grant of an order of stay of execution pending appeal has been met.
6. The relevant criteria is contained in Order 42 rule 6 (2) of the Civil Procedure Rules which provide 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 appellant 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 appellant.”
7. On whether the appellant will suffer substantial loss if the order of stay of execution is not granted, the appellant contends that he is 75 years old and he has been in occupation of the suit property for approximately 45 years. The appellant adds that he stands to suffer substantial loss, loss of reputation, psychological distress, inconvenience and trauma if the respondent were to evict him from the suit property on which he resides. Given that the appellant resides on the suit land, it is probable that his eviction from the suit land during the pendency of this appeal will occasion him substantial loss.
8. On security, there is evidence that the appellant has been on the land for some time. The duration of the period for which he has been on the land is what is contested. Secondly, parties have filed their written submissions in this appeal. Once the trial court record is availed from Kikuyu SPMC, this court will be able to immediately render a determination in this appeal. Given the above circumstances, the question of security for the ultimate satisfaction of the decree of the trial court may not be a big factor or a bar to the exercise of the court's discretionary jurisdiction to grant an order of stay of execution pending delivery of judgment in this appeal which has already been heard.
9. For the above reasons, the court is satisfied that a proper case has been made for grant of an order of stay of execution pending delivery of Judgment in this appeal. A date for delivery of Judgment will be set once the trial court avails the original record.



10. In the end, this court hereby issues an order of stay of execution of the Judgment in Kikuyu SPMC Civil Case No 143 of 2015 pending delivery or Judgment in this appeal which has already been heard. Costs of the application shall be in the appeal.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 16TH NOVEMBER 2023.

B M EBOSO

JUDGE

In the presence of: -

Ms Kamotho for the Appellant

Mrs Muhuhu for the Respondent

Court Assistant: Osodo/Hinga

