



**Manyara v M’Imunya (Environment & Land Case E015 of 2023)
[2023] KEELC 21576 (KLR) (16 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21576 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND CASE E015 OF 2023
CK YANO, J
NOVEMBER 16, 2023**

BETWEEN

IGNATIUS MANYARA APPELLANT

AND

COSMAS M’IMUNYA RESPONDENT

RULING

1. This ruling is in respect of notice of motion application dated 10th August 2023 by the appellant seeking on order of stay of execution of the judgment, decree and other consequential orders in Maua CMCC No. 245 of 2017 delivered on 12th July, 2023 pending the hearing and determination of this appeal. The application is brought under Section 3A of the *Civil Procedure Act*, Order 22, Order 42 Rule 6 and Order 51 Rule 1 and 3 of the *Civil Procedure Rules*.
2. The application is premised on the grounds in the face of the motion and supported by the affidavit of Ignatius Manyara, the appellant/applicant in which he avers that in a judgment delivered in MAUA CMCC245 of 2017, the learned trial magistrate granted orders in favour of the respondent which orders if implemented have the capacity to alter the ownership of the suit land. The applicant contended that he has been residing and utilizing the suit land with his family wherein he has various developments.
3. The applicant avers that the respondent interpreted the orders granted by the trial court as orders of eviction of the applicant and his family from the suit land which action, if carried out, would be prejudicial to them. The applicant argues that he has an arguable appeal with high chances of success and if orders are executed, the intended appeal will be rendered nugatory.
4. In his affidavit, the applicant has annexed copies of the impugned judgment, a letter requesting copies of typed proceedings and judgment and a letter from the District Land Adjudication and Settlement Officer summoning the applicant for purposes of the implementation of the said orders. The applicant



is apprehensive that if stay of execution is not granted, he stands to suffer immeasurable loss and damage.

5. The application is opposed by the respondent vide a replying affidavit dated 12th September, 2023. That he is a successful litigant and is entitled to enjoy the fruits of his judgment. That the applicant has not satisfied the requirements of Order 42 Rule 6(2) of the Civil Procedure Rules as he has not demonstrated to the court the irreparable loss and damage he will suffer if stay is not granted. The respondent however, submitted that in the event the court grants the orders of stay, the same should be on condition that the applicant deposits security for costs before the court. The respondent submitted that the application is not merited, and should be dismissed with costs. Learned counsel for the respondent relied on RWW v EKDW [2019] eKLR, Kenya Power & Lighting Company Ltd v Esther Wanjiru Wokabi [2014] eKLR, James Wangalwa & another v Agnes Naliaka Cheseto [2012] eKLR, Equity Bank Ltd v Taiga Adams Company Ltd [2006] eKLR, Elena D. Korir v Kenyatta University [2012] eKLR and Stanley Kiplagat Rono & another v William Kiprotich Cherus [2012] eKLR.

Analysis and Determination

6. I have considered the application, the affidavits in support and against as well as the submissions made. Stay of execution pending appeal is provided for under Order 42 Rule 6 of the Civil Procedure Rules which provides as follows-;
 - “ 1. No appeal or second appeal shall operate as a stay of execution of proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 2. No order of stay of execution shall be made under sub-rule (1) unless –
 - a) The court is satisfied that substantial loss may result to the applicant unless the order is made and 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.
7. This application was filed in court on 10th August 2023 while the impugned judgment was delivered on 12th July, 2023. This was a period of about one month. The applicant has shown a letter dated 18th July, 2023 requesting for certified copies of the proceedings and judgment. I find that the application was filed timeously.
8. The applicant averred that if stay is not granted, decree issued by the lower court may be executed and the applicant and his family risk being evicted from the suit land which will be prejudicial to them and render the appeal nugatory. The applicant further states that they stand to suffer irreparable loss and damage since they have carried out various developments on the suit land.



9. The purpose and objective of the order for stay of execution is to preserve the substratum of the appeal in order to ensure that the appeal is not defeated. It has been stated that the purpose of an application for stay of execution pending appeal is to preserve the subject matter in dispute so that the right of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory. In this case, it is my view that if the execution is carried out and the applicant and his family are evicted, the applicant will no doubt suffer irreparable loss and damage and the appeal may be rendered nugatory. The respondent has submitted that the stay may be granted on condition that the applicant provides security. Therefore, the court will grant a conditional stay.
10. The court finds merit in the notice of motion application dated 10th August 2023 and allows the same in the following terms;
 - a. Stay of execution of the judgment, decree and other consequential orders in Maua CMCC No. 245 of 2017 delivered on 12th July, 2023 pending the hearing and determination of the appeal herein.
 - b. The applicant shall deposit with the court security in the sum of Kshs. 600,000/= within fourteen (14) days from the date of this ruling.
 - c. In default of compliance with the provisions of such security, the stay orders granted herein shall lapse automatically. Costs of the application shall be borne by the applicant.
11. Orders accordingly.

DATED SIGNED AND DELIVERED AT MERU THIS 16TH DAY OF NOVEMBER, 2023

In The Presence of

Court Assistant – V. Kiragu/Lena M.

No appearance for appellant

No appearance for respondent

C.K YANO

JUDGE

