



REPUBLIC OF KENYA



KENYA LAW
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Ntinyari alias Lucy Muthee Ntinyari v Kinoti (Environment and Land Appeal E009 of 2023) [2023] KEELC 22440 (KLR) (18 December 2023) (Ruling)

Neutral citation: [2023] KEELC 22440 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E009 OF 2023
PM NJOROGE, J
DECEMBER 18, 2023**

BETWEEN

LUCY MUTHEE NTINYARI ALIAS LUCY MUTHEE NTONYARI APPELLANT

AND

MARION KARIMI KINOTI RESPONDENT

RULING

1. This application is dated 26th October, 2023 and seeks the following orders:-
 1. That this application be certified as urgent and the same be heard *ex parte* in the first instance.
 2. That pending interparties hearing of the application, an order be issued, staying the execution of the Judgment delivered on 27/9/2023 in Isiolo CM's ELC Case No. 29 of 2014.
 3. That pending the hearing and determination of the Appeal, an order be issued, staying the execution of the Judgment delivered on 27/9/2023 in Isiolo CM's ELC Case No. 29 of 2014.
 4. That costs of the application be in the cause.
2. The application is supported by the affidavit of Lucy Muthee Ntinyari, the applicant and has the following grounds:-
 - a. That the trial court in Isiolo CM's ELC Case No. 29 of 2014 delivered a Judgment on 27/9/2023 which declared the suit land known as plot No. 168 Kiwanjani/Plot No. 168 Kiwanjani B/plot No. 168 Kiwanjani SQ/LR No. Isiolo Township Block 3/393 to belong to the Respondent herein.
 - b. The trial court also ordered the Appellant to be evicted from LR. No. Isiolo Township Block 3/393 which is registered in her name.
 - c. The trial court also ordered the appellant to pay punitive damages of Kshs. 500,000/=.



- d. That trial court further ordered the Appellant to give vacant possession of the suit property to the Respondent within Sixty (60) days and in default eviction to follow.
 - e. Aggrieved by the said Judgment the Appellant has filed the present appeal.
 - f. That the Appellant has filed this application for stay timeously.
 - g. That the Appellant stands to suffer substantial loss unless the order of stay is granted.
 - h. That the Appellant is ready and willing to offer such security as the Honourable Court orders for the due performance of the trial court decree.
 - i. That the Appellant has occupied the suit land since 1992 and has been farming thereon for 31 years now and she also holds a certificate of Lease over the same land.
 - j. That unless the orders sought are granted, the Appellant stands to suffer great loss and prejudice.
3. The application was heard interparties on 21/11/2023.
 4. Advocate Kaumbi, for the applicant, told the court that if the orders sought in the application are not granted, the applicant would be evicted from the suit land which she has occupied since 1992 and this would lead to substantial loss and if the appeal succeeds, it would be rendered nugatory. He told the court that the applicant was ready to deposit a sum of money as directed by the court as security for costs if the order for stay of execution of the apposite Judgment is granted.
 5. Advocate Kirimi, for the respondent opposed the application. He told the court that he would rely entirely on the respondent's replying affidavit dated 14/11/2023 and its annexures.
He said that he relied on the case of *Machira & Co. Advocates v EA Standard* [2002] KAR 63, for his assertion that a successful litigant ought to be allowed to enjoy the fruits of his/her Judgment. He said that the respondent had been deprived of her property since 2014 and that she has continued to suffer substantial damage. He said that if the appeal succeeds, the applicant's occupation of the suit land could be reinstated through a court order if she is evicted.
 6. The parties argued concerning if the respondent was a person of means or not to enable her compensate the appellant should the appeal eventually succeed. I do not place a lot of weight to these arguments for the purpose of making a decision concerning the orders sought in this application. And more so as the applicant has indicated willingness to deposit security for costs.
 7. I note that an appeal has already been filed. I also note that this application has been filed without undue delay. I do find that it is in the greater interest of justice that this application be allowed with a view to preserving the substantive of the suit pending hearing and determination of the appeal.
 8. In the circumstances, I issue the following orders:-
 - a. This application is allowed conditionally. The applicant is directed to deposit with court as security the sum of Kshs. 600,000/= within 14 days failing which the order of stay granted herein shall automatically lapse.
 - b. Costs shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 18TH DAY OF DECEMBER, 2023

In the presence of:

Court assistant: Balozi/Rahma



Mwirigi Kaburu for the Appellant.

Mwiti h/b Mithega Kariuki for the Respondent.

HON. JUSTICE P.M NJOROGE

JUDGE

