



**Waugh v Kiiru & 3 others (Environment & Land Case 74 of 2014)
[2023] KEELC 22322 (KLR) (15 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 22322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 74 OF 2014
JO OLOLA, J
DECEMBER 15, 2023**

BETWEEN

ANGELA EVELINE WAUGH PLAINTIFF

AND

RHODA WACHUKA KIIRU & 3 OTHERS RESPONDENT

RULING

1. By the Notice of Motion dated 21st March 2023, Rhoda Wachuka Kiiru (the 1st defendant / applicant) prays for an order of stay of execution of the judgment and /or decree issued herein on 16th June 2022 pending the hearing and determination of the Appeal lodged herein.
2. The application which is supported by an affidavit sworn by the Appellant's presided on the grounds that:
 - i). The applicant has lodged an Appeal in the Court of Appeal against the judgment and decree of this court issued on 16th June 2022;
 - ii). The Appeal will be rendered nugatory if the judgment and decree are not stayed;
 - iii). The 1st defendant will suffer substantial loss, damage, prejudice and injustice if the orders sought are not granted as her family shall be evicted from the suit land;
 - iv). The Applicant is ready to abide by any conditions the court so orders in granting the orders sought;
 - v). The plaintiffs will suffer no prejudice if the said orders are granted;
 - vi). It is in the interest of justice that this application is allowed and the orders sought are granted; and
 - vii). The application has been made without any delay whatsoever.



3. Angela Eveline Waugh (the Plaintiff) is opposed to the application. In her Replying Affidavit sworn on 14th April 2023, the Plaintiff avers that the 1st defendant only has an interest in LR. No. Mweiga/Block V/Muthuani/704 while LR. No. Mweiga/Block V/Muthuani/1151 is registered in the name of the 3rd defendant who never entered appearance during trial, and as such, the 1st defendant cannot seek a blanket stay over properties on which she has no locus.
4. The Plaintiff avers that an application seeking execution of the judgment specifically on eviction and execution of transfer documents by the Deputy Registrar of the court was allowed unopposed on 5th December 2022 in the presence of counsel representing the 1st defendant and it is therefore absurd that she is now seeking a stay of the judgment.
5. The Plaintiff further avers that it would be absurd for the court having overwhelmingly ruled in her favour to be invited yet again to deny her the fruits of her judgment having toiled for justice over her deceased husband's estate since the year 2014.
6. I have carefully perused and considered the 1st Defendant's application as well as the response thereto by the Plaintiff. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
7. By the application before me, the 1st Defendant/Applicant prays for an order of stay of execution of the judgment delivered herein on 16th June 2022, pending the hearing and determination of an Appeal she had lodged in the Court of Appeal.
8. As it were, the principles guiding the grant of an order of stay of execution pending an appeal are set out under Order 42 Rule 6 (2) of the Civil Procedure Rules as follows:-
 - “No order for 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 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. That being the case, it is apparent that before considering anything else a court seized of such an application ought first to satisfy itself that the application for stay has been made without an unreasonable delay. In the matter herein, it was not in dispute that the judgment sought to be stayed was delivered on 16th June 2022 and that the application for stay was made some nine (9) months later on 21st March 2023.
10. From paragraph 13 of the Supporting Affidavit to the application, it is apparent that the applicant did not consider that lapse of time to be an issue as she asserts that her application has been made without any delay whatsoever. Having seen the Plaintiff's response to her application, the Applicant filed a Supplementary Affidavit sworn on the 10th May 2023, in which she justified the period taken in bringing the application at Paragraphs 5 to 8 thereof as follows:
 - “5. That I am advised by my advocate on record which advise I believe to be true, that I being a lay person was not able to envisage the timelines in applying for stay of execution although I had lodged a notice of appeal within 14 days from the date of delivery of judgment;



6. That I am advised by my Advocates on record which advise I believe to be true the that mistakes of counsel cannot be visited upon an innocent client;
 7. That I still have the right of stay of execution albeit the delay in filing was caused by the Advocates previously on record who did not advise me on the urgency in filing for the same; and
 8. That the delay in filing for stay of execution was due to inadvertence on the part of my previous counsel on record for the same is not inordinate in the circumstances.”
11. From the foregoing, it was apparent that the 1st defendant had no proper explanation for the delay in instituting the application. On the one hand, she appears to be justifying the delay on the fact that she is a lay person while on the other she blames the same on inadvertence on the part of her previous counsel on record. In addition, the Applicant asserts that the nine (9) months delay was not inordinate and that she still has a right to an order of stay of execution.
 12. As it were, an order of stay of execution is a discretionary remedy that can only be granted by the court when it is properly satisfied that the Applicant is a deserving party. In my considered view, having regard to the nature of the issues and the circumstances of this case, the nine (9) months delay in making this application was quite inordinate and inexcusable.
 13. From the material placed before me, it was apparent that having obtained judgment in her favour, the Plaintiff -decree- holder commenced the process of execution seeking to have the suit properties transferred to her name in accordance with the decree issued herein. It was also apparent that when the 1st and 3rd Defendants declined to execute transfer documents in favour of the Plaintiff- decree-holder, she filed an application herein dated 25th July 2022, seeking police assistance to evict the Defendants as well as an order directing the Deputy Registrar of this court to execute the transfer documents for the suit properties.
 14. The Motion dated 25th July 2022 came up for hearing on 5th December 2022, in the presence of the 1st Defendant’s then Advocate on record. Mr. Muhoho Gichimu and was allowed as prayed as the same was until then unopposed. At paragraph 11 of her Supplementary Affidavit, the 1st defendant makes reference to the proceedings of that day and avers as follows:
 - “ 13. That in response to Paragraph 12 of Replying Affidavit, we state that the Firm of Muhoho Gichimu did not have instructions in regards to the Motion dated 25th July 2022, and as such any position stated by the said firm were not authenticated and or authorized to be mine and were thus misleading, inconsequential and ought to be reversed as they did not portray my true state and position.”
 15. From the foregoing, it was apparent that the 1st defendant was aware of the proceedings that took place and the orders authorizing execution as made by the court on 5th December 2022. Those orders remain in place and have neither been revised nor set aside. And they are certainly not inconsequential as implied by the Applicant.
 16. It follows in the circumstances herein that I am not persuaded that the Motion dated 21st March 2023 has any merit. It is dismissed with costs to the Plaintiff- Decree- holder.

DATED, SIGNED AND DELIVERED AT NYERI THIS 15TH DAY OF DECEMBER, 2023.



In the presence of:

Mr. Mutuma for the Plaintiff/Applicant.

Mr. Karanja Maina for the Respondent.

J. O. OLOLA

JUDGE

