



**Murigi & another v Kariuki & 2 others (Environment and Land Appeal E136 of 2024) [2025] KEELC 3461 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3461 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E136 OF 2024**

**JA MOGENI, J  
APRIL 28, 2025**

**BETWEEN**

**DANIEL MUNGAI MURIGI ..... 1<sup>ST</sup> APPELLANT**

**CREDIT BANK LIMITED ..... 2<sup>ND</sup> APPELLANT**

**AND**

**CHARLES NJUGUNA KARIUKI ..... 1<sup>ST</sup> RESPONDENT**

**GITHUNGURI CONSTITUENCY RANCHING COMPANY LIMITED .... 2<sup>ND</sup>  
RESPONDENT**

**PAUL THEURI MUTAHI ..... 3<sup>RD</sup> RESPONDENT**

*(Being Appeal against the Judgment and Decree of the Chief Magistrate's Court in Ruiru delivered by the Hon. Joseph (CM) on the 31st day of October 2024 in MC ELC Case E124 of 2022)*

**RULING**

1. Notice of Motion dated 21/11/2024 seeks orders of stay pending Appeal with costs.
2. The Appellant averred that he is dissatisfied with the outcome of the trial Court's findings that the suit property belong to the Plaintiff and that there should be a revocation and/or cancellation of the transfer of the suit property to the 2<sup>nd</sup> and 3<sup>rd</sup> Defendant and title in the name of the 3<sup>rd</sup> Defendant.
3. The Appellant was also dissatisfied that the Court issued an order for unconditional discharge of charge held by the 4<sup>th</sup> Defendant.
4. The 1<sup>st</sup> Appellant stated that the Learned Magistrate erred and misdirected himself in law and fact in failing to appreciate that the root of title of the suit property had been properly established by the 1<sup>st</sup> Appellant and the Land Registrar. That the Learned Magistrate erred by failing to appreciate that had



the 1<sup>st</sup> Respondent conducted due diligence he could have discovered that the suit property was already titled and registered in the name of 1<sup>st</sup> Appellant.

5. The Application is premised on the summarized grounds that the 1<sup>st</sup> Appellant has stated in the Application which is supported by the Affidavit of Wainaina F. Ngaruiya who has described himself in the Affidavit sworn on 27/11/2024 as the head of Legal Department of the Appellant/Applicant the 2<sup>nd</sup> Appellant. He avers that there is imminent and real danger that the Appellants will be subjected to execution before they are granted their day in Court thus rendering the Appeal nugatory and moot.
6. Further that the formal decree following the said Judgment has already been extracted and execution on the Judgment is imminent. He stated that he is ready and willing to abide by such conditions as the Honourable Court may deem necessary and reasonable for purpose of ensuring maintenance of the status quo in relation to the property in issue pending the hearing and determination of the Appeal.
7. The Application was not opposed by any of the Defendants despite proof of service.
8. The 1<sup>st</sup> Appellant filed his submissions which I have duly considered.

### **Analysis and Determination**

9. I have considered the instant Notice of Motion Application, the Affidavit, reviewed the submissions filed and the averments made and the only issue for determination is whether there should be a stay of execution of the Judgment delivered on 31/10/2024 in MCLEC No. E124 of 2022 and grant a stay pending appeal.
10. The legal provisions governing stay of execution pending Appeal are contained in Order 42 rule 6(2) of the Civil Procedure Rules which provides that:-

“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 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.”

11. The Lower Court ordered for execution and/or cancellation of the transfer from the 2<sup>nd</sup> Defendant to the 3<sup>rd</sup> Defendant and the title in the name of the 3<sup>rd</sup> Defendant. At the same time the Court declared the Plaintiff to be the owner of the suit property Ruiru/Kiu Block 2/Githunguri/182 and ordered the Land Registrar Ruiru to facilitate the transfer of the suit property to the Plaintiff.
12. In the case of Butt v. Rent Restriction Tribunal [1982] KLR 417 the Court of Appeal while dealing with an Application for stay of execution pending Appeal held that a stay must be granted so that an Appeal may not be rendered nugatory.
13. While in James Wangalwa & Another Vs. Agnes Naliaka Cheseto (2012)eKLR the Court of Appeal held that:-

“An Applicant must establish factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as a successful party.”



14. The relief for stay pending appeal is discretionary and this discretion must be exercised judiciously and upon defined principles of law, not capriciously or whimsically. This means that a stay of execution should only be granted where sufficient cause has been shown by the Applicant. And in determining whether sufficient cause has been shown, the Court should be guided by the three prerequisites provided under Order 42 Rule 6 as stated above at paragraph 10.
15. The current Application was brought timeously as can be seen from the record. The trial Court delivered its Judgment on 31/10/2024 and by 27/11/2024, the instant Applicant had been filed. The 1<sup>st</sup> test was achieved.
16. On the issue of substantial loss, this is a matter dealing with land as the substratum of the suit. Ownership and possession will be at the core of the appeal. In addressing the sustenance of the substratum of the subject matter pending appeal, in the case of *RWW v EKW* [2019]eKLR, the Court stated as follows:-
 

“The purpose of an Application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the Appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the Court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her Judgment. The Court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.

9. Indeed to grant or refuse an Application for stay of execution pending appeal is discretionary. The Court when granting the stay, however, must balance the interests of the Appellant with those of the Respondent.”
17. Balancing the interests of the parties in this appeal, the 1<sup>st</sup> Respondent is the beneficial owner of the suit property while the 1<sup>st</sup> Appellant seeks to be registered and extinguish the right of ownership over the suit property by the 1<sup>st</sup> Respondent as ordered by the Court. It will be in the interest of justice to grant the stay orders pending appeal by ordering that the land in question remain registered in the beneficial interest of the 1<sup>st</sup> Respondent pending appeal and, that the eviction be halted during the pendency of this appeal to preserve the substratum of the suit. Costs in the intended appeal.
18. I direct that the Appellant do file and serve a Record of Appeal in thirty (30) days from the date hereof and mention shall be on 04/06/2025 for directions on the disposal of the Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 28<sup>TH</sup> DAY OF APRIL 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J**

**JUDGE**

In the presence of:

Ms. Kale for the 1<sup>st</sup> and 2<sup>nd</sup> Appellants

1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Respondents – Absent

Mr. Melita – Court Assistant

