



**Muthee v Gichomo (Environment and Land Appeal E051 of 2024)
[2025] KEELC 3449 (KLR) (28 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3449 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E051 OF 2024**

MN GICHERU, J

APRIL 28, 2025

BETWEEN

ESTHER WANJIRU MUTHEE APPELLANT

AND

KENNETH MUGO GICHOMO RESPONDENT

RULING

1. This ruling is on the notice of motion dated 10-12-2024. The motion which is by the Appellant is brought under Orders 42 rule 6, 51 rule 1 [Civil Procedure Rules 2010](#), Sections 1A, 1B, and 3A of the [Civil Procedure Act](#) and all other enabling provisions of the law. The motion seeks the following residual orders.
 - (c) stay of execution of the judgment delivered on 29th November 2024 in Kangema MCELC/08/2020 and/or the pending the hearing and determination of this appeal.
 - (d) That the costs of this application be provided for.
2. The motion is based on five (5) grounds and is supported by an affidavit sworn by the Appellant dated 10th December 2024. The gist of the grounds and the affidavit is as follows. Firstly, in a judgment dated 29-11-2024, the learned trial magistrate in the lower court suit found that L.R. No. Loc 12/ Kanyenyaini/1469, suit land, was matrimonial property which the Appellant's late husband could not sell without her consent. Secondly, the court ordered that the Appellant refunds the partly paid purchase price of Kshs. 300,000/=. Thirdly, the Appellant was dissatisfied with the verdict of the court. Since the transaction between the Respondent and the Appellant's husband was void, then no refund of the purchase price ought to have been ordered. Again the Appellant has limited income and resources. Finally, unless the motion is allowed, the pending appeal which has high chances of success will be rendered nugatory.



3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 30-1-2025 in which he deposes as follows. Firstly, the motion is an abuse of the court process. Secondly, the Appellant has not demonstrated that her appeal has any chances of success. Thirdly, if the court allows stay of execution, then the appellant should be ordered to provide such security for the due performance of the decree as the court deems reasonable. She should deposit the same of Kshs. 300,000/= and this will not render her appeal nugatory.
4. I have carefully considered the motion dated 10-12-24 in its entirety including the grounds, the supporting affidavit as well as the replying affidavit. Order 42 rule 6(2) Civil Procedure Rules provides 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 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 upon him has been given by the Applicant.”
5. For an order of stay of execution to be made the three conditions of substantial loss, application being made without unreasonable delay and a security for the due performance of the decree must all be in existence. If one of the three conditions is missing, then there will be no Order of stay of execution.
6. The Appellant has appealed against the order of refund of Kshs. 300,000/= to the Respondent. She now has the land that her husband had intended to sell to the Respondent. She also has the money that the Respondent paid to her husband. Even if she may not have the money in cash, the estate of her husband, of which she is now the representative, owes the Respondent this sum. This is according to the decree which is now the subject of this appeal. From the material on record so far, I cannot tell what the value of the suit land is but it must be much higher than the decretal amount. This being a money decree, and the suit land not being in any danger, I find that the Appellant has not proved substantial loss. A money decree cannot be said to occasion substantial loss. It would be substantial loss if the Appellant was in danger of losing the suit land through auction. In the event that the appeal is successful, the appellant will be able to recover the decretal sum. After all, there is no doubt that the Respondent paid this sum to the husband of the Appellant.
7. There is no doubt that the appeal was filed without unreasonable delay. The judgment was delivered on 29th November 2024 and the appeal was filed on 17-12-2024. This was expeditious and reasonable.
8. Finally on the third condition, the Appellant is saying that she should be exempt from providing security for the due performance of the decree that may be passed against her. By so saying, she wishes to be outside what the law provides as a condition for an order of stay. This cannot be the case under any circumstances.
9. Overall, I find no merit in the motion dated 10-12-2024 because the Appellant has not proved that she stands to suffer substantial loss. The motion is accordingly dismissed. Costs in the cause.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 28TH DAY OF APRIL, 2025.

M.N. GICHERU
JUDGE.



Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant/Applicant - Kiragu

Respondent – Kagwi

