



Kinyanjui v Joreth Limited & 2 others (Environmental and Land Originating Summons 1189 of 2014) [2025] KEELC 3332 (KLR) (24 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3332 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS 1189 OF 2014**

CG MBOGO, J

APRIL 24, 2025

BETWEEN

JOHN HARRISON KINYANJUI PLAINTIFF

AND

JORETH LIMITED 1ST DEFENDANT

FERDINAND MUNYIRI KAHARUKA 2ND DEFENDANT

CHIEF LAND REGISTRAR 3RD DEFENDANT

RULING

1. Before me is the notice of motion dated 10th February 2025, filed by the plaintiff/applicant, and it is expressed to be brought under Sections 34 and 98 of the Civil Procedure Act, Sections 13 (2) & 19 of the Environment and Land Court Act and Order 51 Rule 1 of the Civil Procedure Rules seeking the following orders:
 1. Spent.
 2. This honourable court be pleased to authorize the Deputy Registrar of this honourable ELC Court to sign all the necessary transfer documents on behalf of Ferdinand Munyiri Kaharuka the 2nd defendant/respondent herein, to give effect to the decree of this honourable court given on 15th November, 2023 by the Honourable Ogotu Mboya in favour of the plaintiff/applicant.
 3. This honourable ELC Court be pleased to issue an order directing the Chief Land Registrar and/or the relevant Nairobi City County Land Registrar having jurisdiction over the suit property known as L.R. No. 13330/260 (I.R No. 148466 to dispense with the production of the original certificate of title in respect of the parcel L.R No. 13330/260 (I.R No. 148466) and copies of National Identity Card, PIN Certificate and Passport size photographs of Ferdinand



Munyiri Kaharuka when registering the necessary title documents to L.R No. 13330/260 (I.R. No. 148466) in favour of the plaintiff, John Harrison Kinyanjui.

4. The costs of this application be awarded to the plaintiff/ applicant, having arisen out of the necessary steps to give effect to the decree of this honourable ELC Court as already ordered.
2. The application is premised on the grounds on its face. The application is further supported by the affidavit of the plaintiff/applicant sworn on even date. The plaintiff/applicant deposed that as the successful party in these proceedings, he is entitled to the fruit of his judgment to have L.R. No. 13330/260 (I.R. No. 148466) the suit property registered in his name. He deposed that the Land Registrar effected in part the terms of the decree by cancelling the proprietorship of the 2nd defendant/respondent. Further, that there were no documents of transfer in his name from the 2nd defendant/respondent, and as it is, the relevant parcel register cannot lie in limbo where there exists a decree in his favour. The plaintiff/applicant further deposed that this matter ought to be concluded, by granting the orders sought to enable him remit the necessary land rates to the Nairobi City County Government in respect of the suit property.
3. The plaintiff/applicant deposed that two years down the line, the 2nd defendant/respondent has never instituted any substantive appeal, yet he was obligated to file his record of appeal within 60 days of lodging the notice of appeal alleged to have been filed. Further, that by a notice of motion dated 18th April, 2024, no order of stay of execution has been issued to date.
4. The 1st defendant/respondent filed its response vide the replying affidavit of Dr. Jonathan Ciano sworn on 21st March, 2025. The 1st defendant/ respondent deposed that being dissatisfied with the judgment of the court delivered on 15th November 2023, it intends to support the 2nd defendant/ respondent who has filed an appeal which has high chances of success. Further, that there is an application for stay of execution pending directions at the Court of Appeal.
5. The 1st defendant/respondent deposed that it opposes the cancellation of the 2nd defendant/respondent's title as there is a real risk that the plaintiff/ applicant might as well deal with the suit property beyond their reach. Further, that the delay in the determination of the application for stay of execution is not attributable to any of the defendants/respondents' fault, and allowing this application would prejudice them.
6. The 2nd defendant/respondent filed his replying affidavit in opposition to the application sworn on 5th March, 2025. The 2nd defendant/respondent deposed that being dissatisfied with the judgment delivered on 15th November, 2023, he filed a notice of appeal and an application for stay of execution before the Court of Appeal which is pending directions. Further, he deposed on the correctness of his notice of appeal, and the status of the record of appeal, and averred that in the event the application is allowed, his appeal will be rendered nugatory as there is likelihood that the plaintiff/applicant may transfer the suit property to third parties.
7. The 2nd defendant/respondent deposed that he has a strong and arguable case as contained in the draft memorandum of appeal, and that the plaintiff/applicant should await the determination of the pending application for stay of execution. Further, that if the instant application is allowed, he stands to suffer irreparable losses and harm as the suit property will be sold to third parties.
8. In response thereto, the plaintiff/applicant filed his supplementary affidavit sworn on 10th March, 2025. While reiterating the contents of his supporting affidavit, the plaintiff/applicant deposed that the 1st and 2nd defendants/respondents did not produce any order granting stay of execution of the decree and judgment of this court. He deposed that this court cannot sit on appeal of its own judgment, and re-evaluate the allegations of the 2nd defendant/respondent. Further, that it is clear in the proceedings



- before the Court of Appeal, he categorically averred that he is not selling or charging the suit property at all.
9. The application was canvassed by way of written submissions. The plaintiff/applicant filed his written submissions dated 12th March, 2025. The plaintiff/applicant submitted that he cannot fully effect the judgment and decree of this court issued in his favour. That the full effect of the decree issued ought to be given by the grant of the orders sought in this application. Further, that it is not contested that the judgment herein was rendered on merit as the parties were heard in conjunction with their respective witnesses. The plaintiff/applicant relied on the cases of *John F Mbugua Njoroge v George Gachiriri Muriama, Peter Kariuki, Njeri Muriama, Nyambura Muriama, Peter Njoroge, Gichiriri Muriama, Kainamia Muriama, Thuku Muriama, Kibunja Muriama, Muraya Muriama, Jane Njeri Muriama, George Muraya Muriama, gichiriri Muriama 'B'* [2012] eKLR, *Fredrick Nyakagwa Osoro v Hezron Mogere & another* [2016] eKLR, *Charles Mukoma Kimaru v Johnstone Muchomba Kaguya* [2020] eKLR, *Machira T/A Machira & Co. Advocates v East African Standard (No. 2)* [2002] KLR 63, and *William Koross (Legal personal Representative of Elijah C.A Koross) v Hezekiah Kiptoo Komen & 4 others* [2015] eKLR.
 10. The 1st defendant/respondent filed its written submissions dated 4th April 2025, where it raised two issues for determination as follows: -
 - i. Whether the present application should be allowed.
 - ii. Who bears the costs of the suit.
 11. On the first issue, and while relying on the cases of *Samvir Trustee Limited v Guardian Bank Limited* [2007] eKLR, *RWW v EKW* [2019] eKLR, *County Executive of Kisumu v County Government of Kisumu & 8 others* [2017] KESC 16 (KLR), and *Hassan Nyanje Charo v Khatib Mwashetani and 3 Others* [2014] eKLR, the 1st defendant/respondent submitted that this court has a sacred duty to balance the interests of both parties, and the delay in having the application for stay pending appeal is not the fault of the 2nd defendant/respondent. Further, that plaintiff/applicant does not reside or carry out any activity on the suit property, and that he will not suffer harm if the status quo is maintained pending the determination of the application for stay and the appeal.
 12. On the second issue, the 1st defendant/respondent submitted that plaintiff/applicant ought to bear the costs of the suit.
 13. The 2nd defendant/respondent filed his written submissions dated 25th March, 2025, where he raised three issues for determination as listed below:
 - i. Whether the 2nd defendant has a competent appeal and whether notice of appeal filed was proper.
 - ii. Whether the 2nd defendant stand to suffer irreparable loss and prejudice if the current application is allowed.
 - iii. Whether this honourable court should allow the plaintiff proceed with execution of the decree in light of a pending application for stay of execution before the Court of Appeal.
 14. On the first issue, the 2nd defendant/respondent submitted that the plaintiff/applicant has raised all manner of issues regarding the date of judgment, the notice of appeal as well as its record, and having requested for the typed proceedings, it is clear that he is exempted from the 60 days rule for filing the record of appeal. He relied on the case of *Lebo & 331 others & 331 others v Kenya Power & Lighting Limited* [2024] KECA 1518 (KLR).



15. On the second issue, the 2nd defendant/respondent submitted that he will suffer irreparable loss if the application is allowed as the plaintiff/applicant will be free to sell the suit property to third parties. Further, that it would be difficult for him to recover the suit property in case the Court of Appeal grants the stay of execution.
16. On the third issue, the 2nd defendant/respondent submitted that the instant application is meant to circumvent the matter before the Court of Appeal, and that it was prematurely filed. Further, that it is in the interest of justice that the application is disallowed and dismissed with costs while maintaining the status quo of the suit property.
17. I have considered the application, the replies thereof and the written submissions filed by all the respective parties. In my view, the issue for determination is whether the application has merit. It is not disputed that judgment in this matter was delivered on 15th November, 2023 in favour of the plaintiff/applicant. Subsequently, a decree was issued on 13th December, 2023 to enable realization of the fruits of the judgment. However, and as averred by the plaintiff/applicant, obtaining the registration of the certificate of title in his name has proved futile owing to absence of duly executed transfer forms in his favour, and as such he is seeking the orders to effect the transfer of title.
18. On the other hand, the 1st and 2nd defendants/respondents are in opposition to the grant of these prayers for the reason that there is a pending application for stay of execution at the Court of Appeal, and that if the application is allowed, the 2nd defendant/ respondent will suffer irreparable loss owing to the likelihood of disposition of the suit property to third parties.
19. Let me quickly point out that the parties herein argued on the correctness or otherwise of the notice of appeal and the record of appeal. At this stage, this court refrains from commenting further because these are issues that are alive at the superior court, and they are not suitable to be discussed in this forum.
20. Having stated the above, and there being no evidence of any order granting stay of execution pending appeal, and the evident refusal by the 2nd defendant/respondent to sign/and or avail transfer forms, this court is satisfied that the orders sought are necessary to enable the plaintiff/ applicant realize his fruits of the judgment. See the case of *Simon Pkite Chemoltor v William Loishakou* [2017] KEELC 2587 (KLR).
21. From the above, the notice of motion is hereby allowed in the following terms:
 - i. The Deputy Registrar of this court is hereby directed to sign all the necessary transfer documents on behalf of Ferdinand Munyiri Kaharuka the 2nd defendant/ respondent herein, to give effect to the decree of this honourable court given on 15th November, 2023 by the Honourable Ogutu Mboya in favour of the plaintiff/ applicant.
 - ii. The Chief Land Registrar, Nairobi is hereby directed to dispense with the production of the original certificate of title in respect of the parcel L.R No. 13330/260 (I.R No. 148466) and copies of National Identity Card, PIN Certificate and Passport size photographs of Ferdinand Munyiri Kaharuka in the registration of the suit property in favour of the plaintiff/ applicant.
 - iii. I make no orders as to costs.

Orders accordingly.

DATED, SIGNED & DELIVERED VIRTUALLY THIS 24TH DAY OF APRIL, 2025.

HON. MBOGO C.G.

JUDGE



24/04/2025.

In the presence of:

Mr. Benson Agunga - Court assistant

Mr. Maina for the Applicant – present

Mr. Ndegwa holding brief for Ms. Njueni for the 1st Defendant - present

Mr. Gachuhi for the 2nd Defendant – present

