



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Wainaina v Gachuri & another (Environment & Land Case
20 of 2017) [2022] KEELC 2343 (KLR) (28 April 2022) (Ruling)**

Neutral citation: [2022] KEELC 2343 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT & LAND CASE 20 OF 2017**

YM ANGIMA, J

APRIL 28, 2022

BETWEEN

HENRY MWANGI WAINAINA PLAINTIFF

AND

STEPHEN KIMANI GACHURI 1ST DEFENDANT

STEPHEN NGIGI KIMANI 2ND DEFENDANT

RULING

1. By notice of motion dated 15th June, 2021 grounded upon Sections 1A, 3A & 3B of the [Civil Procedure Act](#) (Cap. 21), Order 42 Rule 6 of the *Civil Procedure Rules* 2010 (the Rules), and all enabling provisions of the law, the 1st Defendant sought a stay of execution of the judgment and decree of this court dated December 17, 2019 and all consequential orders pending the hearing and determination of Nakuru Civil Appeal No. 11 of 2020 pending before the Court of Appeal.
2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Stephen Kimani Gachuri on June 15, 2021 and the exhibits thereto. The 1st Defendant contended that being dissatisfied with the judgment dated December 17, 2019 he filed a notice of appeal on December 20, 2019 and the substantive appeal on February 19, 2020. He stated that he was apprehensive that unless a stay of execution was granted the pending appeal might be rendered nugatory if ultimately successful.
3. The Plaintiff filed a replying affidavit sworn by his advocate on record, Joseph Kariuki Mwangi, on July 15, 2021 in opposition to the application. It was contended that the application was unfounded, unmerited and otherwise an abuse of the court process. It was contended that the 1st Defendant had failed to satisfy the requirements for the grant of an order for stay pending appeal and that the application had not been filed without unreasonable delay since the impugned judgment was passed



in 2019. The Plaintiff further contended that the Defendants were no longer in possession of the suit property and that the only outstanding issue was payment of general damages and costs of the suit.

4. When the said application was listed for inter partes hearing, it was directed that it shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their submissions. The record shows that the Plaintiff's submissions were filed on January 31, 2022 but the 1st Defendant's submissions were not on record by the time of preparation of the ruling.
5. The court has considered the 1st Defendant's notice of motion dated June 15, 2021, the Plaintiff's replying affidavit in opposition thereto as well as the submissions on record. It is evident from the material on record that the 1st Defendant was an employee of the 2nd Defendant's father on the suit property. He was not claiming or asserting any legal or equitable interest in the suit property. The person who was seeking to assert some rights over the suit property was the 2nd Defendant who claimed that the suit property rightfully belonged to his late father. In the premises, the court is unable to appreciate how the 1st Defendant can suffer substantial loss within the meaning of Order 42 Rule 6 (2) of the Rules in his capacity as an employee or caretaker of the 2nd Defendant. The court finds and holds that the 1st Defendant has failed to demonstrate the element of substantial loss as required by law.
6. The court is further of the view that the instant application was not filed expeditiously and without unreasonable delay as required by law. It is evident that the impugned decree was passed on December 17, 2019 but the application for stay of execution was not filed until 15th June, 2021. There was no reasonable explanation for the lengthy delay since ignorance of the law per se is not a good justification for such inordinate delay. The court is thus of the opinion that the 1st Defendant has failed to satisfy another crucial requirement for the grant of stay pending appeal.
7. The upshot of the foregoing is that the court finds no merit in the 1st Defendant's notice motion dated and filed on June 15, 2021. The same is consequently dismissed with costs to the Plaintiff.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 28TH DAY OF APRIL, 2022.

In the presence of:

Mr. Gicheha for the Plaintiff

No appearance for the 1st Defendant

No appearance for the 2nd Defendant

.....

Y. M. ANGIMA

ELC JUDGE

