



REPUBLIC OF KENYA



KENYA LAW
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Githinji & 2 others v Sojanmi Springfields Limited & 2 others (Environment & Land Case 405 of 2017) [2022] KEELC 3414 (KLR) (30 May 2022) (Ruling)

Neutral citation: [2022] KEELC 3414 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 405 OF 2017**

JM MUTUNGI, J

MAY 30, 2022

BETWEEN

JANE WAGATHUITU GITHINJI 1ST PLAINTIFF

ISAAC KAMAU KABIRA 2ND PLAINTIFF

JACKSON GICHUKI KABIRA 3RD PLAINTIFF

AND

SOJANMI SPRINGFIELDS LIMITED 1ST DEFENDANT

**NATIONAL ENVIRONMENT MANAGEMENT AUTHORITY 2ND
DEFENDANT**

COUNTY GOVERNMENT OF NAKURU 3RD DEFENDANT

RULING

1. The court on 27th January 2022 delivered a ruling respecting the implementation of the judgment delivered by Munyao, J on 19th June 2019. The 1st respondent's earlier application for stay of execution dated 7th October 2019 had been dealt with by the court. The court however had not dealt with the plaintiff's Notice of Motion application dated 23rd July 2019 vide which the plaintiffs had sought to have the 1st and 2nd defendants cited for contempt of court for breaching the terms of the judgment. The court vide its ruling/directions given on 4th November 2020 directed the Director General of NEMA, the 2nd defendant to carry out an audit to ascertain whether the judgment had been complied with and to identify any failures in compliance, if any. The Director General filed a report dated 6th January 2021 and a supplementary report dated 4th October 2021.



2. The parties made comments on the reports filed and the court after reviewing the reports and submissions by the parties inter alia held that: -

“That the order in the judgment that required specific action to be undertaken and which were not subject to the orders of stay issued by the court and the subsequently the Court of Appeal were orders 1-9 in the judgment which related to the restoration and conservation of the environment.

3. The court considered the specific actions that the court in the judgment directed to be performed and was satisfied there was default in compliance and in consequence issued orders as extracted and issued on 8th February 2022 as follows:-

- (a) That NEMA in liaison with WRA and in consultation with 1st Defendant to have fresh samples taken both from the inlet and outlet sites and all analysis and report filed in court within 60 days of the date of this ruling.
- (b) That the main dam be decommissioned within the next 30 days from the date hereof under the supervision of NEMA inspector.
- (c) That the second (Central) dam be decommissioned within the next 30 days from the date hereof under the supervision of NEMA inspector.
- (d) That the greenhouses be decommissioned within 30 days from the date hereof under the supervision of NEMA inspector.
- (e) That the costs of decommissioning of the two dams and the 18 greenhouses shall be borne by the 1st Defendant.
- (f) That the OCS Njoro Police station shall if required to do so by NEMA provide security to facilitate implementation of the court orders issued hereof.
- (g) That NEMA will cause a report on decommissioning of the two dams and the green house to be prepared and filed in court within 45 days of the date hereof.
- (h) That the matter be mentioned on 6th April, 2022 to confirm compliance and/or further directions order.

4. These are the orders that have provoked the 1st Defendant's instant application dated 10th February 2022 where the 1st defendant seeks the following prayers and /or orders: -

1. That this application be certified urgent and be heard on priority basis.
2. That an order for stay of execution of the ruling and consequent orders of this court delivered on 27th January, 2022 be issued pending the hearing of this application inter partes.
3. That an order for stay of execution of the ruling and consequent orders of this court delivered on 27th January, 2022 be issued pending the hearing and final determination of this application.
4. That an order of stay of execution of the ruling and consequent orders of this court delivered on 27th January, 2022 be issued pending the hearing and final determination of the appeal lodged at the Court of Appeal.



5. That costs of this application to follow the event.
5. The application is premised on the grounds set out on the face of the application and the affidavit sworn in support by Beatrice Boke, the 1st defendant's Corporate Affairs Manager. The 1st Defendant averred that the ruling of the court of 27th January 2022 required that they decommission the Main Dam and Central Dam within 30 days of the ruling and additionally decommission the additional 18 greenhouses within the same period. The 1st defendant contended that it was practically not possible to undertake the decommissioning within the period provided as the process required that they prepare a project report and submit the same to NEMA for their consideration and approval before the decommissioning could be initiated. The 1st defendant further averred that compliance with the decommissioning orders as directed by the court would virtually entail shutting down the 1st defendant's business as a whole as it depended on the Dams ordered to be decommissioned to carry on the operations of its flower farm. The 1st defendant further argued that, it had lodged an appeal against the judgment to the court of appeal that was pending determination and that if stay was not ordered the appeal would be rendered nugatory. The applicant further averred it has filed an appeal against the orders given by the court on 27th January 2022. The applicant contended the appeal was arguable and not frivolous and stood high chances of succeeding and hence, the applicant should be afforded an opportunity to be heard on the appeals.
6. The 1st plaintiff, Jane Wagathuitu Githinji, swore an affidavit dated 25th February 2022 in opposition to the Applicant's application for stay. The 1st plaintiff averred that the applicant's application constituted abuse of the court process arguing that the applicant had earlier made an application for stay of execution of the judgment both before this court and the court of appeal which had been disposed of. The 1st plaintiff stated that the court of appeal granted stay of execution of the judgment only in respect of the orders that related to payment of monetary compensation to the plaintiffs being orders 11 and 12 which were in the following terms:-
- “ 11. That the 1st defendant is hereby directed to undertake a rehabilitation programme of the land of the plaintiffs within the next 3 months, and if it is unable to do so, or if rehabilitation is not possible, to pay the plaintiffs the full value of the land that has been wasted, as noted and directed in this judgment.
12. That the 1st defendant is hereby ordered to pay the plaintiffs the loss of user in the sums noted in this judgment”.
7. The court of appeal in disposing the application for stay of execution before it stated that “.....The rest of the orders were aimed at commencing and furthering the process of restoration of the environment and such related factors.”
8. Hon Justice D. O Ohungo in his ruling on 19th December 2019 equally dealt with the 1st defendant's application for stay of execution of judgment before this court as captured in paragraphs 12 and 13 of the ruling as hereunder: -
12. There is no dispute that an application for stay of the judgment herein pending hearing and determination of an appeal is currently pending before the Court of Appeal. In view of the provisions of Section 6 of the Civil Procedure Act and out of deference to the said court, I cannot consider the merits of whether or not an order of stay pending appeal should issue. That will in the circumstances remain the province of the Court of Appeal. So as to encourage



the 1st defendant to actively prosecute its application in the Court of Appeal, I will limit the life of temporary stay orders.

13. In the end, I make the following orders:
- i. This court's order of 20th November 2019 granting stay of execution of the judgment herein pending delivery of the ruling scheduled for 5th February 2020 is hereby reviewed.
 - ii. Temporary stay of execution of orders number 11, 12 and 13 of the judgment herein is hereby granted. As regards order number 11, only the portion of the said order that requires the 1st defendant to pay the plaintiffs the full value of the land that has been wasted is stayed.
 - iii. The rest of the orders in the judgment remain in force and are not stayed.
 - iv. The orders in (ii) above shall remain in force for only six months from the date of delivery of this ruling or until the Court of Appeal makes orders on the application for stay that is pending before it, whichever occurs first.
 - v. In view of this outcome, the ruling scheduled for delivery by this court on 5th February 2020 shall only be in respect of Notice of Motion dated 23rd July 2019.
 - vi. The plaintiffs shall have costs of Notice of Motion dated 25th November 2019 as against the 1st defendant.

9. It is apparent both from the ruling by Hon Justice D O Ohungo and the court of appeal ruling on the stay applications, that the stay granted was limited to those orders in the judgment that dealt with any monetary decree arising from the judgment. As relates to the other orders in the judgment both this court and the court of appeal were in agreement that the same related to the safeguarding, restoration and conservation of the environment in the affected area. In the lead up to the court's ruling of 27th January, 2022 the court sanctioned an audit by NEMA to ascertain the status of implementation of the orders in the judgment that had not been stayed by the court. The court reviewed the reports by NEMA dated 6th January and 4th October 2021 and the affidavits and submissions by the parties respecting the reports and was satisfied the 1st defendant/applicant had not implemented the terms of the judgment as ordered and on that basis the court vide its ruling of 27th January 2022 issued further directions / orders that were aimed at facilitating the implementation of the judgment in regard to those orders that related to the restoration and conservation of the environment.

10. The 1st defendant/applicant has urged that implementing the orders emanating from the court ruling of 27th January 2022 would cripple its operations. The judgment in my view provided a structured manner through which the 1st defendant could have become compliant but the 1st defendant failed to follow through on the requirements set out in the judgment to attain compliance and in the result the 1st defendant fell in breach of implementing the judgment. For instance, the 1st defendant was required to obtain an EIA licence for the dam that was in use, and, for the construction of the second dam (Central dam) within 60 days failing which they were to be decommissioned. Additionally, the 1st defendant was required to obtain EIA licences for the additional 13 greenhouses (18 as per the report)



which they failed to do. NEMA as a consequence issued enforcement notices which however the 1st defendant failed to comply with as well.

11. The court in the judgment in issuing what amounted to environment restoration orders was alive to the fact that the unlicensed dams and the unlicensed greenhouses posed a threat and danger to the public and hence the necessity for them to be environmentally compliant. The orders the court issued on 27th January 2022, were indeed a follow up on the implementation of the judgment of 19th June 2019.
12. The orders in the judgment that the ruling of 27th January 2022 sought to be implemented had not been stayed and in my view could not have been properly ordered to be stayed as they were directed at having the environment restored and conserved for posterity and for public safety. I do not see how compliance with the terms of the judgment relating to the restoration and conservation of the environment could have been injurious to the 1st Defendant. It was a necessity in the public interest to have the dam and the green houses certified and licensed by NEMA to ensure they did not pose any threat to the environment and the public. Protection and conservation of the environment is a cardinal duty of each and every person in terms of Article 69(2) of the constitution and should not be compromised even in the face of economic considerations as the 1st defendant is urging the court to do.
13. In the result and having given due consideration to the applicant's application dated 10th February 2022, I find no merit in the same and I order the same dismissed. I order that each party bears their own costs of the application.
14. Orders accordingly.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH MAY 2022.

J M MUTUNGI

JUDGE

