



REPUBLIC OF KENYA



KENYA LAW
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**Njenga & another (Suing as administrators of the Estate of Paul Njenga Muchui) v Ng'ethe
(Defending as the administrator of the Estate of Stanley Ng'ethe Muchui (Deceased)
(Environment & Land Case 603 of 2013) [2022] KEELC 3218 (KLR) (26 May 2022) (Ruling)**

Neutral citation: [2022] KEELC 3218 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 603 OF 2013**

OA ANGOTE, J

MAY 26, 2022

BETWEEN

FRASHIAN WANJIKU NJENGA 1ST PLAINTIFF

NEWTON MWAURA NJENGA 2ND PLAINTIFF

SUING AS ADMINISTRATORS OF THE ESTATE OF PAUL NJENGA MUCHUI

AND

**PAUL NJENGA NG'ETHE DEFENDING AS THE ADMINISTRATOR OF THE
ESTATE OF STANLEY NG'ETHE MUCHUI (DECEASED) DEFENDANT**

RULING

1. In the application dated November 1, 2021, the defendant/applicant has prayed for the following orders;
 - a. That there be a stay of execution of the judgment delivered on September 30, 2021 and orders/decree made thereunder and all consequential orders pending the hearing and determination of the appeal filed against the said Judgment, order and/or decree.
 - b. That the costs of the application be in the cause.
2. The application is premised on the grounds that in the suit, the plaintiff sought for a declaration that land title number Karai/Karai/1918 (the suit property) registered in the name of Stanley Ng'ethe was held in trust for the said Stanley Ng'ethe and the Plaintiffs in equal shares.
3. It is the defendant's/applicant's case that judgment was delivered on September 30, 2021; that the court agreed with the plaintiffs and directed the said land to be sub-divided into two portions, with



one portion being registered in the name of the plaintiffs and that the defendant being dissatisfied with the said judgment lodged a notice of appeal on December 4, 2021 and is awaiting for proceedings to compile the record of appeal.

4. The plaintiffs opposed the application *vide* grounds of opposition in which they averred that the application is an abuse of the court process; that the suit property is not in danger of being alienated as the respondent is not in occupation and possession of the same and that the plaintiffs are in actual occupation of the suit property.
5. It was averred that the plaintiffs' husband and father respectively was buried on the suit property; that the defendant has not satisfied the grounds for stay of execution and that any order of stay should be on condition that the applicant surrenders and deposits in court the original title deed together with a duly executed transfer form in favour of the decree holders and a sum of Ksh 15 million as security to guarantee due performance of the decree.
6. The parties filed written submissions which I have considered.
7. The record shows that on September 30, 2021, the court delivered a judgment in this matter. In the judgment, the court found that the plaintiffs had proved customary trust and allowed the plaintiffs claim. The claim that the court allowed was for the sub-division of parcel of land known as Karai/Karai/1918 into two equal portions with one being registered in the name of the 1st plaintiff and the other in the name of the defendant.
8. The defendant has sought for an order of stay of execution pending the hearing and determination of the appeal. The law relating to stay of execution is provided for under Order 42 rule 6(2) of the [Civil Procedure Rules](#) which provides as follows;
 - “No order for stay of execution shall be made under subrule (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.”
9. In the case of [Mukuma v Abuoga \(1988\) KLR 645](#), the court held that substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. Indeed, as correctly submitted by the defendant/applicant, while pursuing the appeal, there is nothing stopping the 1st plaintiff from taking steps to have the land sub-divided into two and pursuing a title deed in her name.
10. Considering that the 1st plaintiff may alienate a portion of the suit property once the suit property is sub-divided as ordered by the court, the same may be out of the reach of the defendant while pursuing the appeal. That is likely to occasion the defendant substantial loss.
11. The defendant has agreed to allow the plaintiffs to remain in occupation of the portion of the suit property pending the hearing of the appeal. That being the case, the need for the applicant to deposit security for the due performance of the decree does not arise.
12. Consequently, this court allows the application dated November 1, 2021 as follows;



- a. That there be a stay of execution of the judgment delivered on September 30, 2021 and orders/decrees made thereunder and all consequential orders pending the hearing and determination of the appeal filed against the said judgment, order and/or decree.
- b. Each party to bear his/her own costs.

DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 26TH DAY OF MAY, 2022.

O. A. ANGOTE

JUDGE

In the presence of;

No appearance for the 1st Plaintiff

No appearance for the 2nd Plaintiff

Mr. Ng'ang'a for the Defendant/Applicant

Court Assistant – June Nafula

