



Morjaria & 2 others v Nairobi City County (Environment & Land Case E110 of 2023) [2025] KEELC 4524 (KLR) (8 April 2025) (Ruling)

Neutral citation: [2025] KEELC 4524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE E110 OF 2023**

JG KEMEI, J

APRIL 8, 2025

BETWEEN

LALITA MORJARIA 1ST PLAINTIFF

VIJAY MORJARIA 2ND PLAINTIFF

BHAVIN MORJARIA 3RD PLAINTIFF

AND

NAIROBI CITY COUNTY DEFENDANT

(In respect to the Applicant's application dated the 4/2/25 seeking stay of orders for contempt and committal to civil jail as well as the proceedings)

RULING

1. Patrick Mbogo and Godfrey Akumali, the Applicants/ contemnors have filed this motion seeking the following orders;
 - a. That pending the hearing and determination of the application the Court be pleased to stay the execution of the orders emanating from the Ruling delivered on 31/1/25
 - b. That the Court be pleased to stay any further proceedings in relation to the Plaintiffs/ Respondents application for contempt dated the 11/11/24 and the Ruling issued on the 31/1/25 pending the hearing and the determination of the appeal.
 - c. Costs of the application.
2. The application is premised on the grounds annexed thereto as well as the supporting affidavit of Godfrey Akumali sworn on his own behalf and that of his co-contemnor Patrick Mbogo on even date. They are aggrieved with the ruling of the Court delivered on the 31/1/25 holding them in contempt for violating the courts orders of 27/10/23. The contemnors were directed to purge the contempt within



20 days and comply with the said Court orders. In default of compliance they were to appear before the Court to show cause why they should not be committed to civil jail for the disobedience of the Court orders aforesaid.

3. They aver that they have filed an appeal against the decision of the Court which appeal is expressed through the Memorandum of Appeal annexed and which they avow has high chances of success.
4. They are apprehensive that if the Ruling and its consequential orders together with the notice to show cause is to proceed, their appeal is likely to be rendered nugatory. On irreparable harm they aver that if the Court commits them to civil jail they will suffer irreparable harm on account of loss of their liberty as well as their right to be heard on appeal.
5. Interalia, they contend that they were wrongfully adjudged in contempt of Court yet the Officer Commanding Station (OCS) Starehe Police Station was left out despite being directed in the Court orders to enforce compliance of the said orders. Further that the Nairobi City County was not involved or were in control of the alleged ongoing construction and or development of the land.
6. The application is opposed by the respondents through the replying affidavit of Vijay Morjaria who termed the Applicants application improper and an attempt to obstruct the course of justice and evade compliance of the Court orders. According to them the application is a blatant disregard of the authority of the court.
7. The respondents stated that the Applicants cannot be allowed to renege on their admission that the Nairobi City County owns the land and therefore they can do whatever they want with it including carrying out the instant illegal developments. That in order to evade the compliance of the orders the Applicants are clinging to any excuse including that they were not heard, a non-existent site visit by the Court and that the appeal is a ploy to evade their destiny with the law.
8. Parties have filed written submissions which I have carefully considered.
9. The key issue is whether the application meets the threshold and whether it should be granted.
10. In granting orders of stay of execution, the Court shall be guided by Order 42 Rule 6 of the Civil Procedure Rules which states as follows:-

“(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except appeal case of in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the Application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on Application being made, to consider such Application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.

2. 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 Applicants 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.



3. Notwithstanding anything contained in subrule (2), the Court shall have power, without formal Application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal Application.
4. For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
5. An Application for stay of execution may be made informally immediately following the delivery of judgment or Ruling.
6. Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate Court or tribunal has been complied with.”
11. In the main, this Court is further guided by the decision in the case of *Butt v Rent Restriction Tribunal* (1982) KLR 417. In this case, the Court of Appeal set out what ought to be considered in determining whether to grant or refuse stay of execution pending appeal as follows; -
 - a. The power of the Court to grant or refuse an Application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
 - b. The general principal in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal Court reverse the Judge’s discretion.
 - c. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion a better remedy may become available to the Applicants at the end of the proceedings.
 - d. The Court in exercising its discretion whether to grant or refuse an Application for stay will consider the special circumstances of the case and its unique requirements.
12. In this case the Applicants have been adjudged to be in contempt of Court and what is pending is to demonstrate evidence that they have purged the contempt. If in the next hearing they are unable to show compliance with the Court orders, they will be expected to be sentenced subject to mitigation.
13. Contempt being a quasi-criminal in nature the punishment is serious as the person is likely to lose his liberty even if for a short period of time. In the case of *Republic vs Director of Lands and Urban Planning, Government of Makueni County Exparte Edward Mutinda & 15 Others* [2015] eKLR the Court stated as follows;

“In matters where the liberty of the Applicants is at risk or jeopardy, the Court normally grants stay of execution since to decline to do so may lead to the Applicants being imprisoned a fact which cannot be undone if the appeal succeeds. As was appreciated by the Court of Appeal in *United Insurance Co. Ltd. v Stephen Ngare Nyamboki Civil Application No. Nai. 295 of 2001*, in a matter involving the threat of imprisonment, if the order of imprisonment were to be enforced, even for a few days and the intended appeal were to succeed, that success will obviously be rendered nugatory and therefore stay granted.”



14. Equally in the case of Nation Media Group Vs Child Welfare Society of Kenya [2021]eKLR the Court stated as follows;“

It is evident that the trial Court is about to render its sentence having found the appellant and the alleged contemnors guilty of contempt of Court. The proceedings specifically relating to the issue of contempt of Court are quasi criminal in nature. The Applicant’s apprehension that there is a likelihood of the contemnors being denied their personal liberty through a custodial sentence is quite true. There is no guarantee that the trial Court will simply condemn the contemnors to pay a fine and in default serve an alternative prison sentence. I do find that the Applicants have established that there is likelihood of a substantial loss being suffered should the orders being sought be denied. I see no good reason as to why the Applicants should be denied audience. There has been no persistent pattern exhibited by the Applicants indicating that even if the appeal is dismissed, still the contempt will not be purged. “

15. Guided by the above I am satisfied that the Applicants have established substantial loss.
16. In order to balance the rights of the parties herein that is to say the right of the respondents to enjoy the fruits of the judgement and the right of the Applicants to pursue their right of appeal, I find that the course of justice will be served if the application is allowed on terms.
17. The Applicants stated that they are ready and willing to give such security as the Court may deem necessary. To that end, I order the Applicants to deposit the sum of Kshs 50,000/- each in Court for the purpose.
18. Final orders for disposal;
In the end I allow application on conditions;
- a. That there shall be stay of the execution of the orders emanating from the Ruling delivered on 31/1/25.
 - b. The Applicants will forthwith deposit the sum of Kshs 100,000/- as security in Court within 15 days from the date hereof.
 - c. That the Court do and hereby stays any further proceedings in relation to the Plaintiffs/ Respondents application for contempt dated the 11/11/24 and the Ruling issued on the 31/1/25 pending the hearing and the determination of the appeal.
 - d. In default of prayer number b above, the orders hereby issued shall lapse
 - e. Costs of the application are in favour of the respondents.
- 19 Orders accordingly

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 8TH DAY OF APRIL 2025 THROUGH MICROSOFT TEAMS.

J G KEMEI JUDGE

Delivered online in the presence of;

Ms Mugi HB Kamau Muturi

Mr Sonoya for the Defendant

Mr Mbarire for the Proposed Interested Parties



