



REPUBLIC OF KENYA



**KENYA LAW**  
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**Nyambura & 2 others (Suing as the administrators of the Late Harrison Njoroge Igiria) v Muchiri & 4 others (Environment & Land Case 238 & 261 of 2012 (Consolidated)) [2025] KEELC 3167 (KLR) (8 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3167 (KLR)

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NAIROBI**

**ENVIRONMENT & LAND CASE 238 & 261 OF 2012 (CONSOLIDATED)**

**OA ANGOTE, J**

**APRIL 8, 2025**

**BETWEEN**

**PETER IGIRIA NYAMBURA ..... 1<sup>ST</sup> PLAINTIFF**

**KEVIN NJOROGE MUGWE ..... 2<sup>ND</sup> PLAINTIFF**

**SUING AS THE ADMINISTRATORS OF THE LATE HARRISON NJOROGE IGIRIA**

**AND**

**MARGARET NJOKI MUCHIRI ..... 1<sup>ST</sup> DEFENDANT**

**WELL PUBLISHING LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**DISTRICT LAND REGISTRAR, NAIROBI ..... 3<sup>RD</sup> DEFENDANT**

**PETER IGIRIA NYAMBURA ..... 4<sup>TH</sup> DEFENDANT**

**KEVIN NJOROGE MUGWE ..... 5<sup>TH</sup> DEFENDANT**

**AS CONSOLIDATED WITH**

**ENVIRONMENT & LAND CASE 261 OF 2012**

**BETWEEN**

**MARGARET NJOKI MUCHIRI ..... PLAINTIFF**

**AND**

**PETER IGIRIA NYAMBURA ..... 1<sup>ST</sup> DEFENDANT**

**KEVIN NJOROGE MUGWE ..... 2<sup>ND</sup> DEFENDANT**



## SUED AS THE ADMINISTRATORS OF THE LATE HARRISON NJOROGE IGIRIA

### RULING

1. There are two applications before this court for consideration. The first application is filed by the Plaintiffs and is dated 8<sup>th</sup> May 2024. The Plaintiffs have sought the following orders:
  - a. That this Honourable court be pleased to grant a stay of execution of the judgement and decree made on the 24<sup>th</sup> day of April 2024 pending the hearing and determination of the intended appeal.
  - b. That the costs of this application be provided.
2. The application is supported by the affidavit sworn by Peter Igiria Nyambura, the 1<sup>st</sup> Plaintiff, who deponed that this court delivered judgment and decree in this matter on 24<sup>th</sup> April 2024; that their family is aggrieved by the whole of the judgment and have filed a Notice of Appeal and that they have also requested for proceedings, judgment and decree.
3. The 1<sup>st</sup> Plaintiff asserts that he is apprehensive that the execution of the said judgment is imminent and if the stay of execution of the judgment is not granted, their family would suffer irreparable loss and damage. He stated that they have an arguable appeal with high chances of success and further, that unless stay of execution is granted, their intended appeal will amount to an academic exercise.
4. The 1<sup>st</sup> Defendant opposed the application through a Replying Affidavit dated 9<sup>th</sup> September 2024. She averred that the Plaintiffs have not demonstrated any loss that they will suffer if stay is not granted and that the application is fatally defective, vexatious and bad in faith. She argued that she bought the suit property in September 2010 and she has never enjoyed her property as a result of this suit.
5. The 1<sup>st</sup> Defendant deponed that the Plaintiffs have not demonstrated that they have an arguable appeal with any chances of success as they have not annexed a draft memorandum of appeal, and that they have also not offered security for the performance of the decree in the event their appeal fails.
6. The 2<sup>nd</sup> Defendant opposed the application through Grounds of Opposition dated 7<sup>th</sup> June 2024. He deponed that the application is misconceived, frivolous, and vexatious as it violates the provisions of Order 42 of the Civil Procedure Rules as well as the tenets of the [Appellate Jurisdiction Act](#), and that there is no pre-existing appeal filed before the court or a draft for the court's consideration.
7. The 2<sup>nd</sup> Application is dated 29<sup>th</sup> July 2024 and was filed by the Defendants. In the application, the Defendants have sought the following orders:
  - a. That the ex-parte orders given on 26<sup>th</sup> July 2024 be reviewed, set aside and/or vacated.
  - b. That any other or further orders that the court may deem fit and just to grant.
  - c. That the Plaintiffs to pay the costs of this application.
8. The application is supported by the affidavit sworn by George Mahugu, an advocate of the High Court in the firm of Wangai Nyuthe & Company Advocates on record for the 1<sup>st</sup> Defendant who deposed that it is not correct that the matter was fixed for mention on 23<sup>rd</sup> July 2024.
9. He deponed that the cause list on the Judiciary's portal is evident of this; that the cause list annexed to the Plaintiff's application and marked NK1 has 13 matters whereas the cause list in the Judiciary



portal has 12 matters and that it is clear that the cause list presented by the Plaintiff is a false document created to mislead this court as it varies from the cause list on the judiciary portal.

10. The Defendants' advocate deponed that on 22<sup>nd</sup> July 2024 at 14.41 hours, the Plaintiff's advocate called him, inquiring about what transpired in court in the morning and he advised her of the same and that it was not correct that she learnt on 23<sup>rd</sup> July 2023 that the matter was in court on 22<sup>nd</sup> July 2024.
11. George Mahugu stated that at the time of swearing of the affidavit, the Plaintiffs had not served them with the application and he had just downloaded the application from the court's portal, and that from the CTS, it appeared that the directions were given on the basis of a false document meant to mislead the court with the aim of getting orders through the backdoor.
12. These applications were canvassed through written submissions which I have considered.

### **Analysis and Determination**

13. While this ruling relates to the two applications dated 8<sup>th</sup> May 2024 and 29<sup>th</sup> July 2024, it is necessary to set out the events that took place between the filing of these applications.
14. This court delivered judgment on 24<sup>th</sup> April 2024 disposing of the consolidated suits of ELC 238 of 2012 and ELC 261 of 2012. The court dismissed the Plaintiff's case and found that the 1<sup>st</sup> and 2<sup>nd</sup> Defendants' respective counterclaim was merited. The following orders were issued by the court:
  - i. The Plaintiffs' suit be and is hereby dismissed.
  - ii. The 1<sup>st</sup> Defendant's Counterclaim is found to be merited and is allowed in the following terms;
    - i. The Plaintiffs are hereby ordered to grant vacant possession of the subject property namely, Title No Dagoretti/Riruta/4080 to the 1<sup>st</sup> Defendant within 90 days of the judgement herein failure to which eviction will issue;
    - ii. A Permanent Injunction does hereby issue restraining the Plaintiffs by themselves, their servants or agents or otherwise howsoever from interfering, wasting, disposing, alienating, remaining on, or continuing in occupation of the said subject property;
    - iii. An order is hereby made directing the Lands Registrar to immediately remove the restriction placed on parcel Dagoretti/Riruta/4080.
  - iii. The 2<sup>nd</sup> Defendant's Counterclaim is found to be merited and is allowed in the following terms:
    - i. A declaration is hereby issued that the sale of Title No Dagoretti/Riruta Block 4084 and Dagoretti/Riruta 4085 was valid and the 2<sup>nd</sup> Defendant is the lawful proprietor of the two parcels of land.
    - ii. An order does hereby issue directing the Plaintiffs whether by themselves, their agents, servants or persons acting under their instructions, to point out the beacons or boundary lines in respect of Title No Dagoretti/Riruta/Block 4084 and Dagoretti/Riruta/4085; in the alternative the District Land Registrar Nairobi and/or District Land Surveyor Nairobi to demarcate the said boundary.
    - iii. An order of injunction does hereby issue restraining the Plaintiffs whether by themselves, their agents, servants, employees or persons acting on their behalf or instructions from interfering with the 2<sup>nd</sup> Defendant's access, use, possession and quiet enjoyment of Title No Dagoretti/Riruta/ Block 4085 and 4085.



- iv. The Plaintiff shall bear the costs of the suits and the counter-claims.
15. The Plaintiff then filed the application dated 8<sup>th</sup> May 2024 for stay of execution of the judgment and decree of this court. On the subsequent date of 22<sup>nd</sup> July 2024, the matter came up for mention but there was no appearance for the Plaintiff.
  16. The court all the same issued directions and ordered the Respondents to file their responses within 14 days, the applicants to file further affidavits together with submissions within 14 days of service and the Respondents to file and serve submissions within 14 days of service. A further mention date was scheduled for 30<sup>th</sup> October 2024.
  17. The Plaintiff's Counsel has submitted that on the e-filing portal, the matter was listed for mention on 23<sup>rd</sup> July 2024 and that she therefore missed the attendance of the mention on 22<sup>nd</sup> July 2024. She stated that the 90-day stay of execution would expire on 24<sup>th</sup> July 2024, and the court would not have had an opportunity to deal with the stay application. This court found the application to be merited and on 29<sup>th</sup> July 2024, issued interim stay orders of stay pending determination of the Plaintiff's application dated 8<sup>th</sup> May 2024.
  18. The 1<sup>st</sup> Defendant has deposed that the Plaintiffs did not disclose to the court that when they were filing the application on 26<sup>th</sup> July 2024, eviction had commenced and was completed on 28<sup>th</sup> July 2024.
  19. She further stated that her advocate attended court on 22<sup>nd</sup> July 2024 and on that date, no orders of stay were issued. She contended that the orders issued on 30<sup>th</sup> July 2024 had been overtaken by events and that she had taken possession of the suit property.
  20. According to the 1<sup>st</sup> Defendant, the judgment of the court directed that upon the lapse of 90 days, the Plaintiffs were to be evicted, and the orders lapsed on 23<sup>rd</sup> July 2024; that the interim orders were issued on 29<sup>th</sup> July 2024 and served upon the 1<sup>st</sup> Defendant on 30<sup>th</sup> July 2024, and that there was nothing left for the court to extend and the Plaintiffs should have prayed for a fresh stay of execution.
  21. In response, the 1<sup>st</sup> Plaintiff averred that although eviction commenced on 26<sup>th</sup> July 2024, it was stopped by the police on the same day and it did not commence until 31<sup>st</sup> July 2024, by which date the amended order had already been issued on 29<sup>th</sup> July 2024. According to the Plaintiff, the eviction did not take place between 27<sup>th</sup> and 30<sup>th</sup> July 2024 as they had instructed the police to secure the suit property. He produced a photograph dated 27<sup>th</sup> July 2024 and several other photographs dated 29<sup>th</sup> July 2024 of the suit property.
  22. He deposed that the Defendants continued with the demolition of many houses including an independent building which was not part of the suit property, being on Dagoretti/Riruta/4080. He contended that the 1<sup>st</sup> Defendant was in possession of the suit property.
  23. The application dated 29<sup>th</sup> July 2024 is for setting aside the interim orders that were issued by this court pending the determination of the application dated 8<sup>th</sup> May 2024. This application at this point in time has been overtaken by events and it is a settled principle of law that a court does not issue orders in vain.
  24. In any event, the 1<sup>st</sup> Defendant has contended that the interim orders of stay by this court were obtained by relying on a false document, being the cause list dated 23<sup>rd</sup> July 2024. They also contend that the Plaintiff's advocate was aware that the matter was coming up for mention on 22<sup>nd</sup> July 2024 as she was present in court when that date was issued, and that she called the 1<sup>st</sup> Defendant's Advocate for a brief of what took place on the afternoon of 22<sup>nd</sup> July 2024.



25. The 1<sup>st</sup> Defendant should have presented expert evidence or even the testimony of the registry staff or staff from the Directorate of ICT of the judiciary as to whether the Plaintiffs' cause list contains the markers and identifiers of a genuine cause list from the Judiciary. The 1<sup>st</sup> Defendant did not therefore establish, to the required standard, that the cause list relied on by the Plaintiff was indeed a false document.
26. There then remains the Plaintiffs' application dated 8<sup>th</sup> May 2024 seeking orders of stay pending appeal. It is trite that the purpose of an application for stay made under Order 42 Rule 6 of the Civil Procedure Rules is to preserve the subject matter of the dispute so that the appeal is not rendered nugatory if successful. This was held by the Court in *RWW vs EKW* [2019] KEHC 6523 (KLR) as follows:
- “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
27. It is clear that the 1<sup>st</sup> Defendant has already executed the decree of this court which was issued in her favor and she is now in possession of the suit property.
28. The Plaintiff has contended that the eviction took place after this court had issued orders of stay on 29<sup>th</sup> July 2024 while the 1<sup>st</sup> Defendant has argued that it had executed the decree by 28<sup>th</sup> July 2024. Neither party has presented cogent evidence for this court to make a firm finding of fact on this issue.
29. In the circumstances, the application dated 8<sup>th</sup> May 2024 is dismissed with no order as to costs.

**DATED, SIGNED AND DELIVERED VIRTUALLY IN NAIROBI THIS 8<sup>TH</sup> DAY OF APRIL, 2025.**

**O. A. ANGOTE**

**JUDGE**

In the presence of;

Mr. Mahugu for 1<sup>st</sup> Defendant

Mr. Mwathi for Plaintiff/Applicant

Court Assistant: Tracy

