



Landluck Investments Limited v Kiarri & another (Environment and Land Appeal E076 of 2024) [2025] KEELC 3274 (KLR) (7 April 2025) (Ruling)

Neutral citation: [2025] KEELC 3274 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND APPEAL E076 OF 2024**

**JA MOGENI, J
APRIL 7, 2025**

BETWEEN

LANDLUCK INVESTMENTS LIMITED APPELLANT

AND

JOSEPH GATHUMA KIARII 1ST RESPONDENT

CHIEF LAND REGISTRAR 2ND RESPONDENT

RULING

1. By a Notice of Motion dated 31/07/2024, the Appellant sought stay of execution and/or status quo of Judgment delivered on 04/07/2024 at Ruiru in MCL & E096 of 2021 pending hearing and determination of the Appeal herein.
2. The Application is premised on the grounds on the face of it and supported by the Affidavit of one Ahmed Chege Gikera, the Appellant herein, where he explains that MCL & E096 of 2021 was concluded and Judgment delivered. He contends that he was dissatisfied with the Judgment which was in favour of the 1st Respondent, directing that the 2nd Respondent to immediately cancel/nullify the title issued to the Appellant herein. Further, the Court issued a permanent injunction to the Defendant/Appellant barring the Appellant, her servants, or anybody claiming through her from interfering with 1st Respondent's possession, and enjoyment of the said property known as land parcel number Ruiru Kiu Block 2/1164. He confirms that he filed a Memorandum of Appeal. Further, that the Appeal has high chances of success and will be rendered nugatory if the orders sought are not granted. He reiterates that the 1st Respondent will not suffer any loss or damage that in any case the appeal being sought had already been granted when the Judgment was delivered.
3. The 1st Respondent opposed the instant Application by filing a Replying Affidavit where he deposes that he is the one in occupation of the suit property since 2013 and that the Application by the Appellant for a status quo order is mischievous. That the said Application is intended to give the



Applicant company permission to disrupt the status quo and take possession of the suit parcel through the back door, which would be an interference with the status quo and very unjust and unfair to the 1st Respondent and his family.

4. That since settling on the suit property he has fenced it, put up a two room building and rented one room out. He has buried a grandchild and a son on the said suit property. He commend stone excavation and sale of stones and he goes to the suit property every day except for Sundays to supervise workers. That he has planted trees and has been cultivating food crops. He annexed photographs marked JGK1, 2, 3, 4, 5, and 6 as proof of his claims.
5. It is his contention that the Appellant did not produce any records at trial to prove that one Gathege Njoroge Gathege was the original owner of the suit property.
6. The Application was canvassed by way of written submissions. The Appellant filed their submissions dated 15/10/2024 and the 1st Respondent filed their submissions dated 29/10/2024. The 2nd Respondent did not participate in the Application.

Analysis and Determination

7. I have considered the instant Notice of Motion Application, the respective Affidavits and submissions and the only issue for determination is whether there should be a stay of execution of the Judgment delivered on 04/07/2022 in Ruiru MCLELC No. E096 of 2021.
8. The Appellant's Counsel submitted that the prayers sought in the Application are intended at preserving the suit property and therefore the balance of convenience tilts in the Appellant's favour. Counsel contended that the Appellant/Applicant had proved that he was in occupation of the suit property and that the suit property is registered in the Appellant's name. That the 1st Respondent is aware that the suit property belongs to the Appellant's Company. That a title was issued from the Thika Land Registry dated 24th December 2012 and a copy of search conducted on 28th December 2012 confirmed that the lane was in good status.
9. In response the 1st Respondent in his submissions contended that the Appellant in seeking stay of execution of the Judgment of the lower Court needs to show how the Court shall apply the principles for stay set out under Order 42 Rule 6 (1) and (2). That the Appellant must show sufficient cause for the Application, show that substantial loss will result if the Application is not granted, bring the Application without unreasonable delay and provide security for due performance of the decree.
10. She relied on a myriad of case law including *Magnate Ventures vs Simon Muatha & Another* [2018] eKLR, *Kotecha vs Forbros Tyres Treads Limited Misc Civ APP E083 OF 2024* eKLR, *James Wangalwa & Another v Agnes Naliaka Cheseto* [2012] eKLR, *Micheal Kareko Gatere vs Cooperative Merchant Bank Ltd & 3 Others* [2017] eKLR, *Global Tours & Travel Limited Nairobi HC Winding Up Cause No. 43 of 2000*, and *RWW vs EKW (Civil Suit 25 of 2012) 2019 KEHC 6523 (KLR) (Civ) (21 June 2019)* (Ruling)
11. It is the submission of the 1st Respondent that the interests of justice will therefore be served by denying the Applicant the orders that it seeks since the Application has not set out reasons for granting of interim orders.
12. The legal provisions governing stay of execution pending Appeal are contained in Order 42 Rule 6(2) of the Civil Procedure Rules which provides that:-

“No order for stay of execution shall be made under sub rule (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.”

13. In this instance, the trial Court entered Judgment in favour of the 1st Respondent on 4/7/2024 wherein it declared the Plaintiff as the absolute rightful owner and registered proprietor of land parcel number Ruiru Kiu Block 2/1164 and also the Court ordered for cancellation of the Appellant’s title. The Appellant being aggrieved with the impugned Judgment filed a Memorandum of Appeal and the instant Application seeking stay of execution and/or status quo pending Appeal. He claims he stands to suffer irreparably as the appeal will be rendered nugatory. The 1st Respondent vehemently opposed the instant Application and argued that the Appellant in seeking status quo orders wanted to enter the suit property through the back door since he is the one in occupation with his family.
14. In the case of Butt v Rent Restriction Tribunal [1982] KLR 417 the Court of Appeal while dealing with an Application for stay of execution pending Appeal held that a stay must be granted so that an Appeal may not be rendered nugatory.
15. While in James Wangalwa & Another Vs Agnes Naliaka Cheseto (supra) the Court of Appeal held that:

“An Applicant must establish factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the Applicant as a successful party.”
16. From a perusal of the proceedings in the lower Court culminating in the impugned Judgment. Based on the facts before me while associating myself with the decisions I have cited, I find that the Appellant has not demonstrated what substantial loss he stands to suffer if the order of stay pending Appeal is declined. It is my considered view that since the Appellant has not even offered security for the due performance of the decree, instead of granting a stay of execution, this Appeal should be expedited.
17. It is against the foregoing that I find the Appellant’s Notice of Motion Application dated the 31/07/2024 unmerited and will disallow it. Costs will be in the cause.
18. I direct that the Appellant do file and serve a Record of Appeal in thirty (30) days from the date hereof.
Orders accordingly.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 7TH DAY OF APRIL, 2025
VIA MICROSOFT TEAMS.**

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**MOGENI J
JUDGE**

In the presence of:-

Appellant – Absent

Ms. Myra for the 1st Respondent

2nd Respondent - Absent

Melita - Court Assistant

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MOGENI J



JUDGE

