



**Nyambura & another v Muturi (Environment and Land Appeal
E027 of 2021) [2022] KEELC 3808 (KLR) (16 June 2022) (Ruling)**

Neutral citation: [2022] KEELC 3808 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E027 OF 2021**

YM ANGIMA, J

JUNE 16, 2022

BETWEEN

PETER NDIRANGU NYAMBURA 1ST APPELLANT

JOEL NDIRANGU NJOKI 2ND APPELLANT

AND

PETER NDIRANGU MUTURI RESPONDENT

(Originating from Nyahururu CM ELC No 277)

RULING

1. By a notice of motion dated December 14, 2021 grounded upon sections 1A, 1B & 63 (e) of the [Civil Procedure Act](#) (cap 21), order 42 rule 6 of the [Civil Procedure Rules 2010](#) (the rules), and all other enabling provisions of the law, the appellants sought a stay of execution of the decree passed on November 26, 2021 in Nyahururu CM ELC No 277 of 2018 Peter Ndirangu Nyambura & Another vs Peter Ndirangu Muturi, pending the hearing and determination of the appeal. They also prayed for costs to abide by the outcome of the appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the 2nd appellant, Joel Ndirangu Njoki on December 14, 2021 and the exhibits thereto. the appellants contended that they were aggrieved by the impugned judgement; that the instant application had been filed without unreasonable delay and that unless a stay was granted they shall be dispossessed of their ownership of the suit property. The appellants further contended that they stood to suffer substantial loss and that the pending appeal might be rendered nugatory in the absence of a stay. The court was consequently urged to grant the application.
3. The respondent filed grounds of opposition dated February 1, 2022 opposing the application on several grounds. First, that the appellants had not demonstrated an arguable appeal or one with overwhelming chances of success. Second, that there was no evidence of substantial loss to warrant the



granting of a stay. Third, that the appellants have never occupied or utilized the suit property. Fourth, that appellants had fraudulently obtained registration of the suit property hence granting a stay would perpetuate fraud. fifth, that there was no risk of eminent execution of the decree in any event.

4. When the said application came up for inter partes hearing it was directed that the same shall be canvassed through written submissions. The parties were granted timelines within which to file and exchange their respective submissions. The record shows that the appellants filed their submissions on February 25, 2022 whereas the respondent filed his on March 3, 2022.
5. The court has considered the material and submissions on record and is of the opinion that the main issue for determination herein is whether or not the appellants have satisfied the requirements for the grant of a stay pending appeal. Whereas the appellants contended that they had satisfied the requirements for granting an order of stay pending appeal, the respondent contended otherwise.
6. The requirements for granting a stay pending appeal are contained in order 42 rule 6 (2) of the rules as follows:

“No order for stay of execution shall be made under subrule 1 unless:-

- (a) The court is satisfied that the 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.”

7. It is evident from the copy of the judgment dated November 26, 2021 that the trial court not only dismissed the appellants’ claim to the suit property but also allowed the respondent’s counter claim and ordered rectification of the land register by cancellation of the appellants’ registration. It is evident from the material on record that the appellants are not the ones in occupation of the suit property. The material placed before the trial court indicated that the respondent took possession and settled on the suit property in 1980 or thereabouts and has been residing thereon to date.
8. The appellants’ apprehension as appears from the application is that their registration as proprietors of the suit property may be cancelled and as a result they may suffer substantial loss. They did not demonstrate what loss they shall suffer by such cancellation of registration. It was not demonstrated that their appeal shall be rendered nugatory by such cancellation and rectification of the register. The court is of the opinion that rectification of the register or cancellation of registration are reversible and the appellants’ registration may be restored should the pending appeal become successful. The court is thus far from satisfied that the appellants have demonstrated the risk of substantial loss within the meaning of order 42 rule 6 (2) of the rules. In the premises, the court is not inclined to grant the application for stay pending appeal.
9. The upshot of the foregoing is that the court finds no merit in the appellants’ application for stay. Accordingly, the notice of motion dated December 14, 2021 is hereby dismissed with costs to the respondent.

It is so decided.

RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 16TH DAY OF JUNE, 2022.

In the presence of:



Ms. Ndegwa for the Appellants

Mr. Sigilai for the Respondent

C/A - Caro

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Y. M. ANGIMA

JUDGE

