



Kenya Electricity Transmission Company Limited & another v Gathirwa (Environment and Land Appeal E043 of 2021) [2022] KEELC 3317 (KLR) (16 June 2022) (Ruling)

Neutral citation: [2022] KEELC 3317 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E043 OF 2021**

**JO OLOLA, J
JUNE 16, 2022**

BETWEEN

**KENYA ELECTRICITY TRANSMISSION COMPANY LIMITED 1ST
APPELLANT**

MUNGA KIBANGA & COMPANY ADVOCATES 2ND APPELLANT

AND

JOHN KARIUKI GATHIRWA RESPONDENT

RULING

1. By the Notice of Motion dated 18th November 2021, Kenya Electricity Transmission Company Limited (the Applicant) prays for an order of stay of execution of the Judgment delivered on 21st October, 2021 in Nyeri MELC Case No. 15 of 2018 pending the hearing and determination of the Appeal.
2. The application which is supported by an Affidavit sworn by the Applicant's Manager Legal Services, Conveyancing, Litigation and Prosecution - Lydia Wanja is premised inter alia on the grounds that:
 - (i) On 21st October, 2021 the subordinate Court entered Judgment in favour of the Respondent herein in the sum of Kshs.526,500/- together with costs and interest;
 - (ii) The Applicant is aggrieved and dissatisfied with the Judgment and has already lodged a Memorandum of Appeal;
 - (iii) Unless this Court grants a stay of execution of the Judgment, the Respondent shall move and levy execution upon the Applicant thus rendering the Appeal nugatory;
 - (iv) The Applicant stands to suffer substantial, irreparable loss and damage if the Respondent executes the decree since it will defeat the substance of the application and the Appeal;



- (v) The Respondent's financial means are unknown and hence the Applicant is apprehensive that were the decretal sum to be paid out, the Appeal would be rendered an academic exercise;
 - (vi) The Appeal is meritorious with a high probability of success; and
 - (vii) The Applicant is willing to furnish this Honourable Court with reasonable security in the event it is so directed as a condition for grant of the stay of execution orders;
3. The Respondent John Kariuki Gathirwa is opposed to the application. In his Replying Affidavit sworn on the 7th December, 2021 and filed herein on 14th December 2021, the Respondent avers that it is wrong for the Applicant to purport that the Learned Magistrate misinterpreted the Law when it is the Applicant which shifted its position on the agreed amount of compensation for the loss of use of the land.
 4. The Respondent further avers that the Applicant is not being candid by failing to disclose that what the Court failed to agree with is the amount the Applicant was offering to pay. He further asserts that to purport that he is a man of straw is false for if that were the position, the Applicant would not have sought for land for himself.
 5. The Respondent avers that at the very minimum, the Applicant should be ordered to release the amount it admits to the Respondent while the balance thereof should be deposited in a joint account.
 6. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the rival submissions and authorities placed before me by the Learned Advocates representing the two parties.
 7. The Applicant herein is aggrieved by the Judgment delivered in the Magistrates Court on 21st October, 2021 wherein the Court awarded the Respondent herein the sum of Kshs.526,500/= for the loss of use of his land on which the Applicant has constructed some power lines. Having preferred an Appeal to this Court, the Applicant now urges the Court to stay the execution of the Judgment and decree on account that if execution proceeds, the said Appeal would be rendered nugatory and a mere academic exercise.
 8. The power of the Court to grant or refuse an application for stay of execution is discretionary. As was stated in *RWW -vs- EKW* (2019) eKLR:

“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.”
 9. In the matter before me, Judgment was entered in favour of the Respondent in the sum of Kshs.526,500/= and the Applicant is apprehensive that execution may issue and thereby cause them substantial loss more so given that they are uncertain about the financial position of the Respondent.
 10. As it were, the right of Appeal ought to be balanced with the right of the decree holder to enjoy the fruits of his Judgment. From a perusal of the Judgment of the Honourable Nelly Kariuki, Principal Magistrate dated 21st October, 2020 attached to the Applicant's Supporting Affidavit, it is apparent that the Applicant has already constructed power lines on the suit property and that instead of



Kshs.650,000/= which the Respondent sought as compensation, the Applicant was willing to pay Kshs.210,600/= as the proper compensation due to the Respondent.

11. That being the case I hereby grant a stay of execution on condition that the sum of Kshs.210,600/= be released forthwith to the Respondent. The balance of Kshs.315,900/= should be deposited in an interest earning account in the joint names of the Advocates for the parties within 45 days from today to await the determination of the Appeal.
12. The costs of the application shall be in the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AT NYERI THIS 16TH DAY OF JUNE, 2022.

In the presence of:

No appearance for the Applicant

No appearance for the Respondent

Court assistant – Ndung’u

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J. O. OLOLA

JUDGE

