



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kainamia & another v Munyao & 4 others (Environment & Land Case  
245 of 2017) [2022] KEELC 3693 (KLR) (28 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 3693 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 245 OF 2017  
YM ANGIMA, J  
JULY 28, 2022  
FORMERLY NAKURU ELC.41 OF 2016**

**BETWEEN**

**PETER NGUGI KAINAMIA ..... 1<sup>ST</sup> PLAINTIFF  
JOHN MURAYA KAINAMIA ..... 2<sup>ND</sup> PLAINTIFF**

**AND**

**TABITHA WAMBUI MUNYAO ..... 1<sup>ST</sup> DEFENDANT  
GREGORY KANIA MUNYAO ..... 2<sup>ND</sup> DEFENDANT  
ISAAC NJENGA MUNYAO ..... 3<sup>RD</sup> DEFENDANT  
PETER GITHINJI MUNYAO ..... 4<sup>TH</sup> DEFENDANT  
STEPHEN MUNYAO KANIA ..... 5<sup>TH</sup> DEFENDANT**

**RULING**

1. By a notice of motion dated April 27, 2022 and amended on June 30, 2022 expressed to be grounded upon articles 47, 50 (1) and 159 of *the Constitution* of Kenya 2010, order 22 rule 22, order 50 rules 1 & 10 of the *Civil Procedure Rules* 2010, sections 1A, 1B, 3A and 63 (e) of the *Civil Procedure Act* (Cap.21) and all enabling provisions of the law, the defendants sought a stay of execution of the decree and all consequential orders pending the hearing and determination of NBI ELC Misc. Application No. E060 of 2022 and Nyahururu H.C. Judicial Review No. E005 of 2022.
2. The said application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by Elizabeth Ngugi on June 30, 2022 as an attorney of the 1<sup>st</sup> defendant. It was contended that Title No. Nyandarua/Ol Kalou South/1698 (parcel 1698) which was the subject of the suit was non-existent as the same was sub-divided into 5 portions and the title closed in 2013.



It was further contended that the title deed which the Plaintiffs tendered in evidence at the trial was not authentic and should be subjected to verification by the Directorate of Criminal Investigations. The defendants further stated that they had filed applications in the aforesaid two cases to vindicate their rights hence the decree herein should be stayed in the meantime. The said Elizabeth Munyao also filed a further supporting affidavit sworn on May 18, 2022 without leave of court to expound on the matters contained in the supporting affidavit.

3. The 2<sup>nd</sup> plaintiff, John Muraya Kainama, swore a replying affidavit on June 7, 2022 in opposition to the application. It was contended that the application was filed in bad faith to delay or frustrate the hearing of the plaintiffs' pending application for contempt of court. It was contended that the outcome of NBI ELC Misc. application No. E60 of 2022 shall not affect the decree in the instant suit and that in any event parcel 1698 was not the subject matter in that suit since the parcel number was created in 2002. It was further contended that some of the grounds relied upon in the application were raised during the trial and determined by a competent court hence the same are res judicata. The plaintiffs, therefore, considered the instant application to be an abuse of the court process and urged the court to dismiss it with costs.
4. The court has considered the defendants' said application, the plaintiffs' replying affidavit in response thereto as well as the material on record. The material on record shows that judgment was rendered in favour of the plaintiffs on December 10, 2019 after a full hearing of the suit. The record further shows that the defendants thereafter sought a stay of execution pending appeal vide an application dated December 23, 2019. The defendants were granted a conditional stay vide a ruling dated June 23, 2020. It is apparent that the defendants failed to meet the conditions for stay with the consequence that the stay orders lapsed.
5. The record further reveals that vide a notice of motion dated November 15, 2021 the defendants applied for a review, variation or setting aside of the judgment and decree dated December 10, 2019 on the ground of discovery of new important evidence which could not be available during the trial. One of the aspects raised in that application was that parcel 1698 was non-existent at the time of trial. The said application was dismissed by the court on February 2, 2021 on the basis that it was incompetent since the Defendants had already elected to prefer an appeal against the decree.
6. It is apparent from the material on record that upon failing to obtain a stay and or review of the decree herein, the 1<sup>st</sup> defendant filed an application dated March 30, 2022 in NBI ELC Misc. No. E060/22 for setting aside the judgment in NBI HCCC No.1994 of 1979. She also filed an application dated 27.04.2022 in Nyahururu H.C. J.R. E005/2022 before the High Court seeking judicial review orders against the Land Registrar Nyandarua for restoration of the ownership of Title Nos. Nyandarua/Ol Kalou South/173 & 174 to Munyao Kakunia and to expunge the name of any other claimant from the register. The said parcels are said to be connected to the suit property in the instant suit.
7. The court is of the opinion that since the defendants have lost their previous applications for stay of execution and review of the decree there is no basis in law for granting them a stay of execution pending the hearing of extraneous matters which are not pending either before this court or the Court of Appeal. It is evident from the material on record that the defendants do not believe that litigation should come to an end hence they are employing every trick in the book to forestall execution of the decree dated December 10, 2019 and keep litigation going on indefinitely. The court finds the instant application for stay to be an abuse of the court process on the part of the defendants. The court finds no merit whatsoever in the second application for stay of execution.



8. The upshot of the foregoing is that the court finds no merit whatsoever in the defendants' application for stay of execution. Accordingly, the defendants' notice of motion dated April 27, 2022 and amended on June 30, 2022 is hereby dismissed with costs to the plaintiffs.

Orders accordingly.

**RULING DATED AND SIGNED AT NYAHURURU THIS 28<sup>TH</sup> DAY OF JULY, 2022 AND DELIVERED VIA MICROSOFT TEAMS PLATFORM.**

**In the presence of:**

Mr. Ndichu for the Plaintiffs

Mr. Makori for the Defendants

C/A - Carol

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**Y. M. ANGIMA**

**JUDGE**

