



**Gicheha v Kiragu (Environment and Land Appeal E019 of 2024)  
[2025] KEELC 3362 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3362 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL E019 OF 2024**

**JM KAMAU, J**

**APRIL 3, 2025**

**BETWEEN**

**PAUL KAMANDE GICHEHA ..... APPELLANT**

**AND**

**JACOB KINYUA KIRAGU ..... RESPONDENT**

**RULING**

1. The Appellant's Application dated 30<sup>th</sup> January 2025 is for a stay of execution of the Judgement and Decree of the *Ol-Kalou Magistrate's Court ELC No. E012 of 2024* pending the hearing and determination of the Appeal herein. The same is predicated on the grounds that Judgement in the lower court was given on 28<sup>th</sup> November 2024 asking that the Appellant be evicted from the suit premises LR. No. Nyandarua/Ndemi/75 he has occupied since 1986 and that if the orders sought are not granted, the Appeal, if successful, would be rendered nugatory. In his Supporting Affidavit sworn on even date, the Applicant depones that he has made vast developments on the suit property which he would lose should he be evicted. He is also quick to say that the 60 days stay given to him upon the delivery of Judgement have already expired. In his Replying Affidavit sworn on 24<sup>th</sup> February 2025 deponing that it is not in dispute that the Respondent is the registered owner of the suit land having been so decided by the Provincial Land Disputes Tribunal whose Award was adopted on 13<sup>th</sup> September 2011 and a Decision to declare the Appellant herein the owner of the suit land in *Nyahururu Olkalou No. 239 of 2017 (OS)* was set aside by the Court of Appeal.
2. The Respondent therefore remains registered the absolute owner of the suit land. He further said that the Memorandum of Appeal has no chances of success since the trial Court had considered all the facts, evidence adduced in court, the circumstances of the case and the applicable law before reaching its Decision and that litigation would come to an end since this case started way back in 2000. He therefore opines that this Application was brought in bad faith and should therefore be dismissed with costs. The Applicant filed a supplementary affidavit sworn on the 25<sup>th</sup> February 2025 insisting that he



is on the suit land and that should execution take place then he stands to be rendered homeless and that he has a good case on Appeal.

3. It is not in the purview of this Court to decide whether there is a strong and arguable appeal or not at this juncture. That is a task to be performed later. Should I hold that the Appeal has no chances of success “since the trial court had considered all the facts, evidence adduced in court, the circumstances of the case and the applicable law in coming up with its decision and that this court is likely to uphold the said decision” as the Respondent has urged me to do, then there will be no need to hear the Appeal. This will be prejudicial to the Appeal. Every party has a right to be heard on Appeal and I refuse to poison my mind by evaluating the evidence of the lower court, in order to determine whether this Appeal has (any) chances of success. All that the court is interested in at this stage is to determine whether the Appeal would be rendered nugatory if successful should this Application be refused.
4. The Respondent is concerned that the Applicant has been so far on a land that the Court has determined his. To do a balancing act, I order that the Applicant remains on the suit land and in particular where he has put up his house(s). But on condition that he does not cultivate the other parts of the land and if he has done so since it is planting season, he ceases to do so forthwith and gives vacant possession to the Respondent as indicated above. Further, once the land is transferred to the Respondent, the Respondent shall not subdivide the land or transfer it to a third party or lease it out, charge it or dispose off the land in any other way.
5. These are the orders of the Court.

**RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 3RD DAY OF APRIL 2025.**

**MUGO KAMAU**

**JUDGE**

