



**Wachira & another v Attorney General & 3 others; Muriuki & 4 others
(Interested Parties); Chania Travellers Co-operative and Credit Society
Limited (Exparte Applicant) (Environment and Land Judicial Review Case
9 of 2017) [2022] KEELC 13380 (KLR) (29 September 2022) (Directions)**

Neutral citation: [2022] KEELC 13380 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT AND LAND JUDICIAL REVIEW CASE 9 OF 2017**

JG KEMEI, J

SEPTEMBER 29, 2022

BETWEEN

**PETER GICHIRI WACHIRA 1ST APPLICANT
REPUBLIC 2ND APPLICANT**

AND

**ATTORNEY GENERAL 1ST RESPONDENT
NATIONAL LAND COMMISSION 2ND RESPONDENT
CHIEF LAND REGISTRAR 3RD RESPONDENT
THIKA SUB COUNTY LAND REGISTRAR 4TH RESPONDENT**

AND

**DANIEL TIMOTHY MURIUKI INTERESTED PARTY
PATRICK KARANJA NGUGI INTERESTED PARTY
CO-OPERATIVE BANK OF KENYA INTERESTED PARTY
PETER MWANGI GACHERU INTERESTED PARTY
CECILIA WAMAITHA MWANGI INTERESTED PARTY**

AND

**CHANIA TRAVELLERS CO-OPERATIVE AND CREDIT SOCIETY
LIMITED EXPARTE APPLICANT**



DIRECTIONS

1. The background of this matter before me is that the applicant, Chania Travellers Cooperative Savings and Credit Society Limited filed a judicial review application against the respondents seeking orders *interalia*; an order of prohibition against the 3rd and 4th respondents in purporting to enforce the 2nd respondent's decision contained in the Kenya gazette notice No 6865 with respect to the applicant's LR No Thika /municipality/block8/184 from acting upon or enforcing or complying with the said decision; an order prohibiting the 4th respondent or any of the respondents from processing or issuing any lease in respect of the suit land in favour of the 4th interested party Peter Mwangi Gacheru in purported enforcement of the 2nd respondent's decision as contained in the 2nd respondent's Kenya gazette dated the July 17, 2017; an order of *certiorari* do issue to bring the decision and to quash and the 2nd respondent's decision in the said Kenya gazette.
2. In its considered judgement delivered on the November 1, 2019 the court found that the applicant was not deserving of the orders sought and proceeded to dismiss the judicial review with costs to the respondents and the 4th interested party.
3. Dissatisfied with the outcome of the judgement, the applicant filed a motion on the January 22, 2020 seeking orders that there be stay of execution of the judgement dated the November 1, 2019 and the consequential decree pending the hearing and determination of the applicant's intended appeal to be filed in the Court of Appeal.
4. Upon determination of the application, the court delivered its ruling on the March 4, 2021 dismissing the application on grounds that the orders issued by the court having been negative orders were not capable of stay of execution.
5. On the December 31, 2019 the 4th interested party filed a party and party bill of costs dated December 20, 2019 herein. The court taxed the party and party costs in the sum of Kshs 238,209/- in favour of the 4th interested party. I refer to the certificate of costs dated the June 30, 2021 and issued on the July 22, 2021 on record.
6. On the August 12, 2021 the 4th interested party filed a notice of motion seeking orders *interalia*; that the certificate of costs having not been altered, set aside, vacated and or varied, judgement be entered in terms of the certificate of taxation dated the July 22, 2021 and the certificate aforesaid be adopted as a decree of the court.
7. On the June 27, 2022 the counsel for the applicant, Mr Kinyanjui informed the court that his client had filed an appeal in the Court of Appeal *vide* E081 of 2021 and obtained orders which froze all the proceedings in JR No 9 of 2017 which proceedings included the taxation of costs herein. He referred the court to para 4 of the ruling of the Court of Appeal issued on the October 12, 2021. He argued that the related issues mentioned in clause 4 of the said orders included the taxation of costs.
8. In vehement disagreement, Mr Mathenge counsel for the 4th respondent stated that according to his reading and comprehension of the orders of the Court of Appeal aforesaid, there was no stay of proceedings least of all the execution of the certificate of taxation of costs. That it only preserved the suit property from any transfer or the 4th interested party taking possession as well as any alterations of the records maintained in respect to the property. He was emphatic that the applicant has not placed any application for stay of proceedings before this court and that the notice of motion dated the April 12, 2021 having been served is unopposed and urged the court allow it as prayed.



9. In a rejoinder Mr Kinyanjui reiterated his arguments and urged the court to hold that the interim orders of the Court of Appeal stayed the proceedings in the instant suit.
10. Mr Onyango, counsel representing the 1st interested party stated that he was leaving the matter to the court.
11. The arguments made by the learned counsel for the applicant and the 4th respondent are centred around the Court of Appeal's interim orders issued on the October 12, 2021 and the central issue is whether or not the said interim orders stayed the proceedings in this court.
12. As stated earlier this suit was heard and determined *vide* the judgement of this court rendered on the November 1, 2019 which judgement is now the subject of appeal in Court of Appeal No E081 of 2021.
13. The applicant in this case who is the appellant in the Court of Appeal moved the Court of Appeal seeking for interim orders which orders were issued on the October 12, 2021. The orders interalia are worded as follows;
 - a. The rent accruing from the property that was in dispute in ELC JR No 9 of 2017 at Thika, LR No Thika Municipality Block 8/184 (the suit property) shall be deposited in an interest earning account in the joint names of the applicant's advocates and the 8th respondent's advocates with effect from November 1, 2021 until the intended appeal is heard and determined or until further orders of this court.
 - b. The applicant shall be in possession of the suit property until the intended appeal is heard and determined.
 - c. The intended appeal should be filed and served within 90 days from the date hereof.
 - d. The status quo as it exists today in respect of the suit property, the records thereof and all other related issues to be maintained, pending the hearing and determination of the appeal.
 - e. The notice of motion dated March 9, 2021 is deemed as spent *in lieu* of these interim orders.
14. It is commonly agreed that the existing proceedings in this suit relate to the 4th interested party's notice of motion dated the April 12, 2021 seeking the execution of the certificate of costs issued on the July 22, 2021 in his favour.
15. I have considered the arguments and counterarguments of the parties as set out above.
16. I have also perused the Court of Appeal orders referred to above including para 4 which states as follows;

“The status quo as it exists today in respect of the suit property, the records thereof and all other related issues to be maintained, pending the hearing and determination of the appeal.”
17. In my respectful view the taxation and execution of costs arising from the judgement in JR No 9 of 2017 are matters that are subject to the pending appeal. I say so because these are matters that are in contest before the appellate court and I find it best to allow the Court of Appeal to conclude the appeal before the hearing of the pending notice of motion dated August 12, 2021 seeking execution of the certificate of taxation.
18. It is therefore my finding that these proceedings stand stayed pending the hearing and determination of the pending appeal in CA E081 of 2021 and to avoid conflicting decisions of the two superior courts.
19. Directions are given accordingly.



DELIVERED, DATED AND SIGNED AT THIKA THIS 29TH DAY OF SEPTEMBER 2022 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Kinyanjui for Applicant

Defendant 1, 2, 3 and 4 - Absent

Onyango for 1st Interested Party

2nd and 3rd Interested Party – Absent

Mathenge for 4th Interested Party

5th Interested Party - Absent

Court Assistant – Phyllis Mwangi

