



**Miheso v Kathuri & another (Environment and Land Appeal
E007 of 2022) [2022] KEELC 13654 (KLR) (24 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13654 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT AND LAND APPEAL E007 OF 2022
PM NJOROGE, J
OCTOBER 24, 2022**

BETWEEN

ALFRED MIHESO APPELLANT

AND

LYDIAH KATHURI 1ST RESPONDENT

DANIEL THURANIRA 2ND RESPONDENT

RULING

1. This application is dated 4th of October, 2022 and seeks the following orders;
 1. That this Honourable Court be pleased to certify this application urgent and hear it ex-parte in the first instance.
 2. That this Honourable court be pleased to order stay of execution of the Judgement/Decree and all the consequential orders thereto issued on 31/8/2022 in Isiolo Civil Case No.28 of 2015 pending the inter partes hearing and determination of this application or until further orders of this court.
 3. That this Honourable Court be pleased to order stay of execution of the Judgement/Decree and all the consequential orders issued on 31/8/2022 in Isiolo Civil Case No. 28 of 2015 pending the hearing and determination of this Appeal or until further orders of this court.
 4. That cost for this application be provided for.
2. The application is supported by the affidavit of Alfred Miheso, the applicant sworn on October 4, 2022 and has the following grounds;



1. The Lower Court delivered the Judgement on 31/8/2022 in which it ordered that the plaintiff's name be cancelled as the owner of Plot No. 21 Kambi ya Juu Isiolo and substitute the same with the names of the Defendants – Lydiah Kathure and Dennis Thuraira respectively.
 2. The Appellant was aggrieved by that Judgement and has filed the appeal herein.
 3. The appeal herein has overwhelming chances of Success.
 4. The respondents may execute the Lower Court Judgement against the Appellant any time.
 5. The appellant stand to suffer substantial loss if execution is done before this appeal is heard and determined.
 6. The appeal herein is likely to be rendered nugatory in the event it succeeds after execution has already been done.
 7. The application herein has been brought expeditiously and without undue delay.
3. Conditional stay was granted to the applicant on October 7, 2022 provided that he deposited with court as security the sum of Kshs. 800,000/=.
 4. As of today, the applicant has not deposited the required security and he and his advocate are not in court.
 5. In the circumstances, the following orders are issued; -
 - a. This application is dismissed.
 - b. I issue no order as to costs.
 - c. Directions will be taken on November 21, 2022 and Notice to Issue.

DELIVERED IN OPEN COURT AT ISIOLO THIS 24TH DAY OF OCTOBER, 2022 IN THE PRESENCE OF; -

Court Assistant: Rahma Jaldesa

HON. JUSTICE P.M. NJOROGI

JUDGE

