



**Mugambi v Kirera (Environment and Land Appeal E003 of 2021)
[2022] KEELC 13681 (KLR) (17 October 2022) (Ruling)**

Neutral citation: [2022] KEELC 13681 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISILOLO
ENVIRONMENT AND LAND APPEAL E003 OF 2021
PM NJOROGE, J
OCTOBER 17, 2022**

BETWEEN

GLADYS KALUYU MUGAMBI APPLICANT

AND

GEDION KABIKI KIRERA RESPONDENT

RULING

1. This application is dated December 1, 2021 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 November 23, 2021 in Isiolo ELC Case No 12 of 2017 pending the inter parties 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 November 23, 2021 in Isiolo ELC Case No 12 of 2017 pending the hearing and determination of this appeal or until further orders of this court.
 4. That costs for this application be provided for.
2. The application is supported by the affidavit of Gladys Kaluyu Mugambi and has the following grounds.
 1. The lower court delivered the Judgement on November 23, 2021 in which it awarded the Respondent kshs 700,000/= in general damages and costs of the suits.
 2. The appellant was aggrieved by the judgement and she filed the appeal herein.



3. The appeal herein has overwhelming chances of success.
 4. The respondent may execute the lower court judgement against the appellant anytime.
 5. The appellant stands 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.
3. In this court's ruling delivered at the *ex parte* stage on January 24, 2022 the court upon perusal of the application and its annexures issued the following orders;
- a. Conditional stay of execution of the Judgement or decree issued on November 23, 2022 in Isiolo ELC Case No 12 of 2017 is hereby granted subject to the applicant/appellant depositing with court as security the sum of kshs 700,000/= within 21 days of today Failing Which the conditional stay granted herein shall automatically lapse.
 - b. The appellant should properly serve upon the respondent with the orders issued by the court within 10 days of today.
 - c. The application will be heard inter parties on March 14, 2022.
4. On March 14, 2022 the parties elected to have the application canvassed by way of written submissions.
5. The applicant/appellant submissions are dated May 5, 2022.
6. The respondent's submissions are dated May 24, 2022.
7. Both parties have proffered authorities in support of their veritably incongruent assertions. These authorities are all good authorities in their facts and circumstances.
- However not all cases are congruent in their facts and circumstances. A court must take into account the facts and circumstances of each case.
8. In their submissions the applicant and the respondent have argued as if they are canvassing the intended appeal. I opine that the issues they raise can best be handled at the hearing of the appeal. This stage can only be reached after an appeal has been admitted which stage has not been reached in this case.
9. The overarching and overriding objective of a stay of execution is to protect the subject matter during the pendency of an appeal. Of course, during the hearing of the appeal all parties are given opportunities to fully canvass their positions.
10. I do note that the applicant/appellant has deposited as security the sum of kshs 700,000/= as was directed by the court on January 24, 2022. I am not persuaded by the respondent that the security already deposited is not enough to safeguard his interests should the applicant/appellant eventually lose his appeal. In the general interest of justice, I find that the intended appeal should be escalated to full hearing.
11. The following orders are hereby issued:
- a. The conditional stay granted to the applicant/appellant is hereby confirmed and the sum of kshs 700,00/= already deposited with court as security should be retained by the court pending hearing and determination of the intended appeal.



- b. The applicant/appellant is directed to file a record of appeal within 30 days of today and properly serve it upon the respondent.
- c. Further directions will be issued on December 5, 2022.
- d. Costs concerning this application shall be in the cause.

DELIVERED IN OPEN COURT AT ISIOLO THIS 17TH DAY OF OCTOBER 2022 IN THE PRESENCE OF;

Court assistant: Balazi

Nyamokeri for the applicant

Respondent and/or advocate absent

HON. JUSTICE PM NJOROGE

JUDGE

