



REPUBLIC OF KENYA



**KENYA LAW**  
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**Wanje & another v Mulewa; County Executive Committee Physical  
Planning- Kilifi (Third party) (Environment and Land Appeal  
E013 of 2021) [2022] KEELC 15065 (KLR) (24 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 15065 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E013 OF 2021  
EK MAKORI, J  
NOVEMBER 24, 2022**

**BETWEEN**

**ALPHONSE WANJE ..... 1<sup>ST</sup> APPELLANT**

**BONIFACE MBOGO ..... 2<sup>ND</sup> APPELLANT**

**AND**

**ESTHER KANZE MULEWA ..... RESPONDENT**

**AND**

**COUNTY EXECUTIVE COMMITTEE PHYSICAL PLANNING-  
KILIFI ..... THIRD PARTY**

**RULING**

1. The applicants filed an application dated March 29, 2022 inter alia seeking prayers for a stay of execution of the judgment delivered on the March 15, 2022 at Kaloleni Magistrate's court ELC No 2 of 2019 pending hearing and determination of this Appeal.
2. The court directed parties to file written submissions. i can see the applicant has filed submissions intended to dispose of the whole appeal while the respondent has filed submissions targeted at the pending application for stay pending appeal.
3. I have no submissions as to whether there is a danger or intention in altering the substratum of the suit property or whether the appellants have been threatened with eviction.
4. the respondent concedes to stay pending appeal granted subject to a deposit of Kshs. 2,000,000/= to meet the costs of the suit so far incurred, under order 42 rule 6 of the *Civil Procedure Rules*.



5. The court decreed the respondent as the lawful owner of the suit property in contention that is LR No 10227/30 as delineated on Land Survey Plan No 319375. An order of demolition of structures standing on the suit property erected by the appellants was issued. Eviction was to take effect after 90 days of the delivery of the judgment by the trial court. Counter-claim was dismissed.
6. I have no submissions as to whether the appellants complied with the court's orders by voluntarily moving out of the land in question. Nothing to show the respondent has ejected the appellants out of the land 90 days after the judgment of the court lapsed. The respondent in reply agrees that the appellants are still in occupation.
7. To preserve the suit property pending the outcome of the appeal, and guided by the Court of Appeal's holding in the case of *Mwadzaya Wachanda Clan Welfare Registered Trustees & 58 others v Petro Oil Kenya Ltd & 6 others* (Civil Application E055 of 2021) [2022] KECA 402 (KLR): -

“It is notable that the 1<sup>st</sup> respondent does not dispute that the applicants are in occupation of the property which was the subject of the ruling in Malindi ELC Case No E063 of 2020, namely Kilifi/Madzimbani/Mitangoni/835 and 841. In the circumstances, it is our view that the appeal will be rendered nugatory if the current status *quo* with regard to the possession and the status of the title to the suit property is disturbed before the determination of the applicants' appeal.

16. The 1<sup>st</sup> respondents has urged that certain conditions be imposed if the orders sought are found to be merited. We are however of the opinion that we cannot impose the conditions sought for two reasons. Firstly, there is no monetary claim sought by, or awarded to the 1<sup>st</sup> respondent against the applicants in relation to the suit land; and secondly, the nature of some of the conditions sought require supervision by this court, which is not possible. It is our view that justice will be better served for all parties in the circumstances of this application by the expeditious hearing and determination of the applicants' appeal.”

This appeal does not relate to a monetary claim. It is about ownership and possession of LR No 10227/30 as delineated on Land Survey Plan No 319375. The conditions sought to be imposed by the Respondent relate to costs. Those costs can always await the outcome of the appeal. The suit property remains intact. I will therefore be inclined to grant stay orders to preserve the suit property pending the determination of the current appeal as guided by the Court of Appeal authority I have quoted.

8. The upshot is that this court is inclined to issue stay orders as follows: -
  - a. An order be and is hereby granted preserving the status quo obtaining as of March 15, 2022 concerning the physical possession and ownership of property known as LR No 10227/30 as delineated on Land Survey Plan No 319375, pending the hearing and determination of the applicants' appeal.
  - b. The applicants are restrained from any further developments and constructing structures on the suit property.
  - c. To expedite this matter, The respondent within 14 days hereof to file replies and submissions in respect to the appeal, and thereafter a judgment date to issue.
  - d. The costs of the application dated March 29, 2022 to abide by the outcome of the appeal.



**DATED, SIGNED, AND DELIVERED AT MALINDI VIRTUALLY IN OPEN COURT ON THIS  
24<sup>TH</sup> DAY OF NOVEMBER 2022.**

**E.K. MAKORI**

**JUDGE**

**In the Presence of: -**

Ms. Angeline Omollo for Appellant.

Mr. Mayieka for the Respondent.

