



**Kagiri v Kinyanjui (Environment & Land Case 13 of 2021)
[2022] KEELC 15596 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15596 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 13 OF 2021
AK BOR, J
DECEMBER 20, 2022
(FORMERLY NYERI ELC CASE NO. 48 OF 2016)**

BETWEEN

DAVIDSON MWANGI KAGIRI PLAINTIFF

AND

ANN MARY KINYANJUI DEFENDANT

RULING

1. The Defendant brought the application dated 15/9/2022 seeking to have the Deputy Registrar of the court execute all transfer documents in respect of six acres in land reference number (L.R No.) 6324/10 (“the suit property”) in her favour in accordance with the judgment which this court delivered on 28/4/2022. Further, that upon the Deputy Registrar executing the transfer instruments it be deemed as sufficient for completion and the transfer. The Defendant also sought to have the subdivision and excision of six acres from that land undertaken by the Government surveyor or a surveyor of her choice. She sought to have the Land Registrar, Nanyuki ordered to dispense with the production of the original title deeds, a copy of the Plaintiffs identity card, pin certificate and passport size photographs at the time of the registration.
2. The grounds on which the application was made were set out on face of it. The Defendant claimed that the Plaintiff failed to subdivide the suit property for purposes of hiving off 6 acres in accordance with the court’s judgment and that he had refused to execute the completion documents to effect the transfer of the six acres to the Defendant in compliance with the decree. She contended that the only way for the decree to be satisfied was to authorise the Deputy Register to sign the instruments of transfer of the land to the Defendant and for the Land Registrar to dispense with the legal requirement for the Plaintiff to produce certain documents necessary for the registration of the transfer in her favour. The Defendant pointed out that it was necessary to have the suit property subdivided by a surveyor for purposes of excision of the six acres.



3. The application was supported by the Defendant's affidavit in which she deponed that the Plaintiff's failure to comply with the judgment amounted to contempt of court yet there were no orders for stay of execution of the decree of this court.
4. The Plaintiff filed a replying affidavit in opposition to that application and averred that being dissatisfied with the whole judgment of this court, he filed a Notice of Appeal dated 6/5/2022 intending to challenge it at the Court of Appeal in Nyeri. He applied for proceedings which had not been supplied. He annexed a copy of the application for stay of execution which he filed in the Court of Appeal at Nyeri which was yet to be given a hearing date. He urged that if the Defendant were allowed to execute the decree it would render his appeal nugatory and that he had a constitutional right of appeal and needed to be given an opportunity to pursue his appeal which he argued had merit. He went further to state that if the application were granted, the Defendant may proceed to dispose of, transfer, or sell the land to third parties making it impossible for him to recover it should his appeal succeed.
5. Parties filed submissions which the court has considered. The Defendant relied on *Charles Mukoma Kimaru v Johnstone Muchomba Kaguya* [2020] eKLR where the court observed that the only way a judgment and decree of the court could be effected was by authorising the Deputy Registrar to sign the instruments of the transfer of land.
6. The Plaintiff submitted that he had filed an application for stay of execution of this court's judgment in the Court of Appeal and that he had no control over the fixing of dates in that court. He added that more than three months had passed since he filed his application and there was no communication from the Court of Appeal on when his application would be heard. He urged that the application for stay of execution was intended to preserve the subject matter in dispute so that his rights are safeguarded and if his appeal succeeds then it will not be rendered nugatory. He relied on Sections 1A and 1B of the *Civil procedure Act* which enjoins the court to give effect to the overriding objective of ensuring that execution of one party's right does not defeat or derogate the rights of the other. He denied that he had deliberately refused to comply with the court's decree and stated that executing the transfer forms in favour of the Defendant would compromise his intended appeal, which he contended has merit and high chances of success.
7. The issue for determination is whether the court should grant the order sought in the application dated 15/9/2022. On 28/4/2022 the court entered judgment in favour of the Defendant and directed that six acres were to be excised from the suit property and transferred by the Plaintiff to the Defendant. The Defendant seeks to give effect to the decree. The Plaintiff contends that the excision of the six acres and transfer to the Defendant will render his appeal nugatory if he were to succeed and added that he had filed an application for stay of execution in the Court of Appeal.
8. There are no orders staying execution of the decree issued in the suit. The court is not persuaded that it is just to deprive the Defendant of her right to enjoy the fruits of her judgment while the Plaintiff pursues his right of appeal. The Defendant is alive to the fact that the Plaintiff is pursuing an appeal against the decree of this court and that she ought not to dispose of the six acres of land once it is transferred to her name or otherwise deal with the land in a manner that would render the appeal nugatory. The Defendant is fully aware that she will be legally bound by the outcome of the appeal.
9. The court grants the prayers sought in the application dated 15/9/2022 in the following terms:
 - i. The Government Surveyor or a surveyor of the Defendant's choice will undertake the subdivision of L.R. No. 6324/10 for purposes of excision of six acres in favour of the Defendant as decreed in the judgment delivered on 28/4/2022.



- ii. The Deputy Registrar of the court will execute all transfer instruments in respect of the six acres to be excised out of L.R No. 6324/10 in favour of the Defendant. Upon execution of the transfer instruments by the Deputy Registrar, they will be deemed as sufficient instruments for purposes of effecting the transfer of the six acres of land to the Defendant.
- iii. The Land Registrar, Nanyuki is directed to dispense with the production of the original title deed in respect of L.R No. 6324/10, the Plaintiff's national identity card, pin certificate and passport size photographs at the time of registration of the six acres to be excised out of L.R No. 6324/10 in the Defendant's name.
- iv. The cost of subdivision of L.R. No. 6324/10 for purposes of excision of the 6 acres to be transferred to the Defendant shall be borne by the Plaintiff. The registration fees and stamp duty on the transfer shall be borne by the Defendant

DELIVERED VIRTUALLY AT NANYUKI THIS 20TH DAY OF DECEMBER 2022.

KOSSY BOR

JUDGE

In the presence of:

Mr. Donald Owang for the Plaintiff

Mrs. Salome Beacco for the Defendant

Ms. Stella Gakii- Court Assistant

