



**Maganjo & Company Limited & 3 others v Mwaniki (Legal representative of Mwaniki Miano - Deceased) & 2 others (t/a Magonjo & Company) (Environment and Land Appeal E0041 of 2022) [2022] KEELC 15460 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15460 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E0041 OF 2022  
LC KOMINGOI, J  
DECEMBER 20, 2022**

**BETWEEN**

**MAGANJO & COMPANY LIMITED ..... 1<sup>ST</sup> APPELLANT  
PETER KARANJA THUO ..... 2<sup>ND</sup> APPELLANT  
HANNAH WANJIRU THUO ..... 3<sup>RD</sup> APPELLANT  
HAMUD MOHAMED OSMAN ..... 4<sup>TH</sup> APPELLANT**

**AND**

**WILFRED NJOGU MWANIKI (LEGAL REPRESENTATIVE OF MWANIKI  
MIANO - DECEASED) ..... 1<sup>ST</sup> RESPONDENT  
PATRICK MWANIKI MBOGO (LEGAL REPRESENTATIVE OF MBOGO  
IRERI) ..... 2<sup>ND</sup> RESPONDENT  
NJOGU MAREGWA & SAMUEL GITHINJI (LEGAL REPRESENTATIVE OF  
MAGU RUTERE - DECEASED) ..... 3<sup>RD</sup> RESPONDENT  
T/A MAGONJO & COMPANY**

**RULING**

1. This is the notice of motion dated September 11, 2022 brought under sections 1A, 1B and 3A of the [Civil procedure Act](#), order 22, rules 22, order 10, rules 10 and 11 and order 51 of the [Civil Procedure Rules](#) and other enabling provisions seeks the following prayers;
  - (d) That this honourable court be pleased to order stay of execution of the judgment and orders issued on August 24<sup>th</sup>, 2022 by Honourable I Kahuya, the decree issued on August 25, 2022 and all consequential orders pending the hearing and determination of the intended appeal.



2. The application is based on the grounds on the face of it and the affidavit of Hamud Mohamed Osma dated September 22, 2022 and October 17, 2022 filed on September 22, 2022 and 21<sup>st</sup> October respectively.

He confirms that on August 29, 2022, the trial court in its Judgement declared the plaintiff to be the bonafide owner of Plot No 14 Majengo Kajiado Township, herein after referred to as the suit land. The county government was directed to issue it with an allotment letter upon cancelling the one held by the 4<sup>th</sup> appellant.

In addition, the 4<sup>th</sup> appellant was restrained from dealing with the suit land in any manner. Despite this, the 4<sup>th</sup> appellant insists he is the suit land registered owner which he bought in 2008 for value consideration of Kshs 400,000/- and was peacefully occupied by his tenants.

3. He explains that although the trial court judgment was stayed for 30 days, the respondent executed it, harassed and intimidated his tenants. For this reasons, the Judgment should be stayed failure to which he suffer losses and lose ownership of the suit land therefor rendering the appeal nugatory. His rental income will also be lost yet he paid the entire suit land purchase price. Should the court order for security, he claims that he is willing to surrender the suit land title and ksh 450, 000/= as security.
4. He deposes that as a bonafide purchaser for value, the trial court never found him to have legally acquired the suit property. Instead, his co-appellants where found to have fraudulently acquired the suit land from the Respondent.
5. Opposing the application for stay, the respondent partner, and Wilfred Njogu Mwaniki filed a replying affidavit sworn on September 30, 2022 on October 4, 2022 where he contends that the application must be dismissed with costs for being an abuse of court, unmerited and frivolous because it has no chance of success.
6. He avers that the 4<sup>th</sup> appellant has not demonstrated how he stands to suffer irreparable harm if the orders are not granted because the memoranda of appeal does not contain any arguable case with possibility of success.

According to him, no good title was passed to the 4<sup>th</sup> appellant given it was illegally obtained when the 2<sup>nd</sup> appellant stole the respondent allotment letter. He explains that the 1<sup>st</sup> appellant was formed on November 13, 2017 by the 2<sup>nd</sup> and 3<sup>rd</sup> respondent as its directors upon which they conspired to unlawfully and fraudulently acquire the suit land. Upon obtaining an application for transfer dated December 30, 2008, letter of allotment dated January 14, 2009 was issued to the 4<sup>th</sup> appellant without the respondents' consent or knowledge.

7. He accused the 4<sup>th</sup> appellant of being untruthful to the court as the respondent never received any purchase price from the 4<sup>th</sup> appellant nor authorize suit land transfer to him. Therefor he cannot claim ownership of the land because the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> appellants never had any legal capacity to transfer it him.
8. He deposes the respondent acquired the suit land in 1968 for investment purposes with no intention of disposing the property in whatever manner and there for a stay order can only be granted if the 4<sup>th</sup> appellant is directed to deposit 7m, which is the value of the land and all rent proceeds as security.
9. I have considered the notice of motion, the affidavits in support and the annexures. I have also considered the response thereto, the written submissions and the authorities cited.

The issues for determination are;



- a. Whether stay of execution of the trial court judgment should be granted pending the hearing and determination of the intended appeal?
  - b. Who should bear costs of this application?
10. The appellant acknowledges that the trial court in its judgment affirmed that the suit land was illegally acquired it from the respondent. As a result, the county governments was directed to issue the respondent with a title after cancelling the one with the 4<sup>th</sup> appellant. He asserts that despite stay of execution of the judgment, the respondent has already executing it therefor occasioning him financial losses yet he is bonafide purchaser for value whose interested must be protected. Given his appeal has high chance of success, he prays that he be granted the orders sought failure to which the appeal shall be rendered nugatory. He confirms he is willing to surrender the suit land title, ksh 450,000 and any other security the court may order. The respondent accuses the 4<sup>th</sup> appellant of misrepresenting that he legally acquired the suit land and therefor the appeal has no arguable grounds. given they acquired the property for development, the 4<sup>th</sup> appellant should deposit as security 7 million which is the value of the land and all suit land rental proceeds.
11. In determining this application, the court has to balance the interests of the appellant who is seeking stay of execution so that the appeal is not rendered nugatory and those of the respondent who wants to enjoy the fruits of his judgment. Therefore the court has to determine whether the appellants have demonstrated he would suffer prejudice and irreparable loss if the application is not allowed.
- In making this determination, the court shall be guided by section 1A, 1B and 3A of the Civil Procedure Act Cap 21 and section 3 of the Environment and Land Court Act, 2012. These provisions stipulate the overriding objectives which guide and bind this court when determining disputes before it.
12. Both parties have pursued this court to take into consideration their different security for costs should the application be allowed. The respondent assertion that the current market value of the suit land is 7M may be true. However, no valuation report has been placed before this court to support this fact. For this reasons, the court is reluctant to order deposit of security amounting to 7M.
13. In conclusion, I found merit in this application could grant the orders sought namely;
- a. That there be stay of execution of the judgment and orders issued on August 20, 2022 by Hon I Kahuya (PM), the decree issued on August 25,2022 and all consequential orders pending the hearing and determination of the interceded appeal; on condition that the 4<sup>th</sup> appellant do deposit kshs 500,000/- as security for costs in a joint interest earning account in the names of his counsel and that of the Respondent within forty five (45) days from the date of this ruling.
  - b. That the rental income ought to be deposited in the said account by February 1, 2023.
- In default of (a) and (b) the stay of execution shall automatically lapse.
- c. The appellants are hereby directed to file and serve a record of appeal within thirty (30) days from the date of this ruling.
  - d. That costs of this application shall be borne by the appellants.

**DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF DECEMBER, 2022.**

**L.C. KOMINGOI**

**JUDGE**



**In the presence of:**

Mr. Ibrahim for the Appellants

Miss Githinji for Mr. Mugo for the respondents

Court Assistant- Mutisya

