



**Pere v Gicheru & another (Environment & Land Case 572 of 2017)
[2022] KEELC 15430 (KLR) (20 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15430 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT & LAND CASE 572 OF 2017
MN GICHERU, J
DECEMBER 20, 2022**

BETWEEN

MEPUKORI PERE PLAINTIFF

AND

SAMUEL GICHERU 1ST DEFENDANT

ENDOLVINE INVESTMENT LIMITED 2ND DEFENDANT

RULING

1. This ruling is on the notice of motion dated January 11, 2022. It seeks a stay of execution of the Judgment and decree herein.

The motion which is under sections, 1A, 1B and 3A of the *Civil Procedure Act*, order 42, rule 6 and 51, rule 1 of the *Civil Procedure Rules* and all other enabling provision of law is supported by eleven (11) grounds, an affidavit and three (3) annexures.
2. The gist of the above material is that if the stay of execution is not granted, the defendants run the risk of being evicted from the suit premises before their appeal is heard. This will render the pending appeal nugatory.
3. In the judgment dated September 16, 2021, the court found that there was no valid lease either express or implied.

It was also a finding of the court that there was no evidence of payment by the defendants/applicants of the rent arrears.
4. The application is opposed by the respondent/plaintiff who has sworn a replying affidavit dated May 18, 2022. In the affidavit, the respondent deposes that the applicants have not paid the rent arrears adjudged by the court. The respondent therefore continues to suffer prejudice because as the suit pends, the applicants occupy the suit premises without paying rent.



5. The counsel for the parties filed written submissions on June 6, 2022 and October 4, 2022 respectively. Only two issues arise in the submissions.
 - i. Whether the court has jurisdiction to entertain the current application.
 - ii. Whether the application is merited.
6. I have carefully considered the application in its entirety including the affidavits, the grounds, the annexures and the written submissions, including the case law cited therein.
7. On the first issue of jurisdiction, I find that this court has jurisdiction under Order 42, Rule 6(1) of the *Civil Procedure Rules*. It provides as follows.

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order...”
8. is the court appealed from. It has the requisite jurisdiction as can be seen from the above rule.
9. On the second issue, I find that the application has no merit for the following reasons.
 1. Firstly, I find that there was delay in filing the current application. The judgment appealed against was delivered on September 16, 2021. This application was filed on January 11, 2022 which is almost four months later.

There is no explanation by the first applicant for this inordinate delay.
 2. Secondly, I find that the applicants have not done equity. They are said to be in rent arrears in excess of Kshs 2 million since February, 2020. No evidence has been adduced to prove any recent payment of rent by the applicants to the respondent.
 3. Finally, there is no guarantee that the applicants who have no valid lease and are in rent arrears will ever pay the respondent all his rent dues in the event that the applicants’ appeal is not successful.
10. For the above reasons, I find no merit in the application dated January 11, 2022 and I dismiss it with costs.

It is so ordered.

DATED SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20TH DAY OF DECEMBER, 2022.

M.N. GICHERU

JUDGE

