



**Mutahi v Kithangari & 7 others (Environment & Land Case  
75 of 2019) [2022] KEELC 15363 (KLR) (14 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15363 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE 75 OF 2019**

**CK NZILI, J**

**DECEMBER 14, 2022**

**BETWEEN**

**BENSON GICHOBI MUTAHI ..... PLAINTIFF**

**AND**

**ALEX NJUE KITHANGARI ..... 1<sup>ST</sup> DEFENDANT**

**MURIIITHI KITHANGARI ..... 2<sup>ND</sup> DEFENDANT**

**BONIFACE MUTHEE NJERU ..... 3<sup>RD</sup> DEFENDANT**

**PETERSON MUGO KITHANGARI ..... 4<sup>TH</sup> DEFENDANT**

**MWANIKI KITHANGARI ..... 5<sup>TH</sup> DEFENDANT**

**NJERU TETU ..... 6<sup>TH</sup> DEFENDANT**

**MURIIITHI MUCHARO ..... 7<sup>TH</sup> DEFENDANT**

**KITHANGARI KING'ANGI ..... 8<sup>TH</sup> DEFENDANT**

**RULING**

1. The 1<sup>st</sup>, 2<sup>nd</sup>, 4<sup>th</sup>, 6<sup>th</sup> and 8<sup>th</sup> defendants who are the decree holders have brought an application dated September 21, 2022 seeking for the court to authorize the Deputy Registrar to execute all the documents in place of the plaintiff/respondent to facilitate the subdivision and transfer of 10 acres out of Mbeere/Kirima/3066 to be registered jointly in their favour and a further 5 acres to be registered in favour of the 6<sup>th</sup> defendant in line with the decree issued on July 21, 2021. Secondly, the decree holders pray that the Land Registrar be directed to dispense with the production of the original title deed for the subject parcel of land during the subdivisions and the OCS Gachoka police station to provide security during the subdivision exercise.



2. The application is supported by the affidavit of Muriithi Kithangari sworn on September 21, 2022. In the said affidavit the applicants state the judgment debtor is not likely to freely execute the necessary documents to give effect to the judgment hence the reason there is need to grant the orders sought so that they can occupy the portions that they were occupying at the inception of the suit.
3. The plaintiff/judgment debtor has opposed the application by an affidavit sworn on October 24, 2022 for being *malafides*, misconceived, incompetent, vexatious, frivolous and an abuse of the court process. That there is a pending appeal as per the copy of record of Nyeri Civil Appeal No. E105 of 2021 attached as annexure marked EAM “001” hence the application is *subjudice* and may render the appeal nugatory. That the appeal is arguable as per the ruling attached as BGM “002”. Further, that the appeal is yet to be heard and determined hence it was only fair and just to have it heard before any subdivisions could occur. That if the orders are granted it may bring embarrassment with contradictory verdicts.
4. With leave of court, parties filed written submissions dated November 7, 2022 and November 10, 2022 respectively.
5. It is the applicant’s submissions that the Court of Appeal dismissed an application for stay and therefore the pendency of an appeal did not amount to stay of execution and land being a fixed asset it was not likely to disappear. Reliance was placed on *James Wangalwa & another v Agnes Naliaka Cheseto* (2012) eKLR.
6. On the other hand, the plaintiff/respondents submitted that if the subdivision occurred, the substratum of the appeal would be no-existent and render the appeal nugatory since the new parcels of land may be transferred to third parties. Reliance was placed on *Kenya Shell Ltd v Kibiru & another* (1986) KLR 410, *Wachira Karani v Bildad Wachira* (2016) eKLR, *Abmed Musa Ismael v Kumba Ole Ntamorua and 4 others* (2014) eKLR, *Brinks Security Services Ltd v Nickson Mwangi Elioji* (2021) eKLR.
7. It is not in dispute that after the judgment, the judgment debtor appealed to the Court of Appeal and filed three applications dated July 27, 2021, August 30, 2021 and 2.9.2021 whereof it was ordered to deposit security of Kshs.800,000/= but was unable to do so.
8. The three applications were struck out by a ruling of this court dated January 19, 2022. After the said ruling there is no indication from the records if the judgment debtor lawyers regularized their appearance in line with Order 9 Rule 9 *Civil Procedure Rules*.
9. That notwithstanding, the Court of Appeal pronounced itself on the issue of stay and by the doctrine of precedent this court cannot purport through an invitation of the respondent sit on appeal on a decision of the appellate court which is binding on it.
10. Therefore, I find no merits on the ground that the judgment debtor has demonstrated the requirements of stay under Order 42 Rule 6 the *Civil Procedure Rules*. That being the case and in absence of an order staying execution, I find the application dated September 21, 2022 with merits. The same is allowed with costs.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 14<sup>TH</sup> DAY OF DECEMBER, 2022**

In presence of:

C/A: Kananu



No appearance

**HON. C.K. NZILI**

**ELC JUDGE**

