



**Kagiri v Warutere (Environment and Land Appeal 47 of 2021)
[2022] KEELC 15237 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15237 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 47 OF 2021**

JO OLOLA, J

DECEMBER 8, 2022

BETWEEN

SUSAN WACHERA KAGIRI APPLICANT

AND

PATRICIA WANGU WARUTERE RESPONDENT

RULING

1. By the notice of motion dated November 18, 2021 Susan Wachera Kagiri (the appellant) prays for orders framed as follows:
 2. That the honourable court be pleased to stay further proceedings and execution of decree in this matter, the order of the court issued on June 14, 2021 and October 28, 2021 pending the hearing and determination of this application and/or appeal filed herein or further orders of this court;
 3. That the honourable court be pleased to exercise its inherent power and issue any other further order in the interest of justice; and
 4. That (the) cost of this application be borne by (the) respondents.
2. The application is supported by an affidavit sworn by the appellant on the said November 18, 2021 and a supplementary one sworn on May 25, 2021 and is based on the grounds that:
 - (i) The appellant is threatened with execution as the application for stay and review of the orders of this court dated July 15, 2021 and August 30, 2021 were dismissed on October 28, 2021.
 - (ii) The appellant being dissatisfied by the said ruling has preferred this appeal and has made an application for the typed proceedings for purposes of preparing the record of appeal;



- (iii) The orders of June 14, 2021 have the effect that the appellant shall suffer prejudice as the entire suit land can be re-advertised for sale by public auction any time and the appellant has no other place of abode and shall suffer irreparable damage;
 - (iv) The appeal raises arguable grounds of appeal with high chances of success;
 - (v) The respondent had placed an order of prohibition on the land pursuant to the order of this court issued on December 3, 2018 hence the appellant had been denied the exercise of rights of absolute ownership;
 - (vi) No prejudice shall be occasioned to the respondent as the appellant gives an undertaking to comply with reasonable conditions to be set by this court; and
 - (vii) Unless the orders of stay are granted the appeal shall be rendered nugatory and the appellant shall be denied the right to be heard and be deprived of his property.
3. Patricia Wangu Watere (the respondent) is opposed to the application. In A replying affidavit sworn on March 1, 2022 as filed herein on March 10, 2022, the respondent avers that the application has been overtaken by events as the decree has already been executed and the suit land sold by public auction to one David Muiru Githaiga.
 4. The respondent further avers that the title to the parcel of land passed to the said David Muiru Githaiga upon the fall of the hammer at the said auction and the orders of stay ought not be used to reverse what has already taken place.
 5. I have carefully perused and considered the application and the response thereto. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates acting for the parties herein.
 6. By the application before me, the appellant prays for stay of the decree issued in Nyeri CMELC Case No 272 of 2018 on September 15, 2021. The application is premised primarily on the grounds that execution of the decree was imminent after the trial court adopted the mediation settlement as orders of the court on the said date and subsequently issued orders allowing execution to proceed. It is the appellant's case that she stands to suffer substantial loss as the suit land may be re-advertised for sale and sold by public auction any time from now.
 7. In opposition to the application, the respondent contends that the orders sought cannot be granted as the application has been overtaken by events after the decree was executed and the suit property was sold by public auction to one David Muiru Githaiga. In support of that contention, the respondent has attached various annexures indicating that the parcel of land known as Mweiga Estate Scheme/201 measuring some 1.720 Ha (4.25 acres) was advertised for sale by public auction on December 23, 2021.
 8. In addition, the respondent has attached both a memorandum and certificate of sale indicating that the suit property was indeed sold on the said day to the said David Muiru Githaiga after he was declared the highest bidder for the land at Kshs.7.8 Million.
 9. In her supplementary affidavit filed herein on May 30, 2022, the appellant reiterates that the respondent has commenced execution proceedings and has annexed as proof of the same a notice of motion application filed by the respondent in the trial Court dated January 14, 2022 in which the respondent, inter alia, urges the court to confirm and declare absolute the sale by public auction that was conducted on December 23, 2021.



10. As it were, an extract of the order of the trial court issued on June 14, 2021 and which the appellant sought to have stayed is annexed to her application. The same reads in the relevant part as follows:

it is hereby ordered:

1. That the application herein is certified as urgent and service is dispersed with in the first instance;
2. That the honourable court hereby allows change of mode of execution from committal to civil jail to execution by attachment of the Judgment debtor's parcel of land Mweiga Estate Scheme/201;
3. That the honourable court hereby authorizes Hippo auctioneers general merchants and court bailiffs of PO Box 2024 – 10100 Nyeri to attach and sell by public auction parcel of land number Mweiga estate scheme/201;
4. That the honourable court directs that the sale be conducted by public auction; and
5. That Prayer No 5 to be canvassed during inter-parties hearing on June 22, 2021.”

11. Arising from the foregoing, it was apparent that the events sought to be stayed in the application before me had already occurred. The auction sought to be stayed had long taken place on December 23, 2021 and this court was being invited to act in vain by purporting to stay the same.

12. It was also apparent that following the auction, the ownership of the suit property had on the fall of the hammer passed on to a third party who is not a party to these proceedings and any orders issued herein were likely to prejudice the said third party without giving him an opportunity to be heard.

13. It follows that i did not find any basis to grant the orders sought in the motion dated November 18, 2021. I dismiss the same.

14. The costs of the application shall be in the appeal.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 8TH DAY OF DECEMBER, 2022.**

In the presence of:

No appearance for the appellant

No appearance for the respondent

Court assistant - Kendi

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J. O. Olola

JUDGE

