



REPUBLIC OF KENYA



**KENYA LAW**  
THE NATIONAL COUNCIL FOR LAW REPORTING  
Where Legal Information is Public Knowledge

**Mwaniki v Munyua (Environment and Land Appeal 53 of 2021)  
[2022] KEELC 15215 (KLR) (8 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15215 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL 53 OF 2021**

**JO OLOLA, J**

**DECEMBER 8, 2022**

**BETWEEN**

**JOHN MUCHIRI MWANIKI ..... PLAINTIFF**

**AND**

**NAOMI GATHONI MUNYUA ..... DEFENDANT**

**RULING**

1. By the notice of motion dated December 10, 2021, John Muchiri Mwaniki (the appellant) prays for an order of stay of execution of the judgment delivered on November 16, 2021 in Nyeri MCL & E No E013 of 2020 and any subsequent order emanating therefrom. The application is supported by an affidavit sworn by the appellant on November 10, 2021 and a supplementary one filed on May 11, 2022 and is premised on the grounds:
  - (a) That the appellant is apprehensive that the respondent shall proceed to execute the judgment dated November 16, 2021 and the costs arising therefrom;
  - (b) That the appellant has lodged an appeal to this court which appeal may be rendered nugatory if stay is not granted;
  - (c) That the appellant has raised good and arguable grounds of appeal with high probability of success;
  - (d) That the appellant and his family stand to be evicted from their homes if stay is not granted;
  - (e) That in light of the foregoing, it is only just and fair that this application is allowed.
2. Naomi Gathoni Munyua (the respondent) is opposed to the application. In her replying affidavit sworn on January 20, 2022, the respondent avers that she has no intention of evicting the appellant from the parcels he has proved ownership but the issue in question was whether the appellant



was the *bona fide* proprietor of the parcels of land known as Nyeri/Naromoru/3730 and Nyeri/Naromoru/3731.

3. The respondent avers that the placing of a temporary injunction against the two parcels of land will be a great injustice against legitimate *bona fide* owners who will have their livelihood disturbed on baseless claims as they are in use and possession thereof and to deter them from the use thereof shall render them destitute.
4. I have carefully perused and considered the application by the appellant as well as the response thereto by the respondent. I have similarly perused and considered the submissions placed before me by the learned advocates acting for the parties herein.
5. By this application, the appellant has urged this court to stay execution of the judgment of the Honourable M Okuche, Principal Magistrate delivered on November 11, 2021. It is the appellant's case that the respondent may proceed to execute the said judgment and thereby have him and his family evicted from the suit properties.
6. From the material placed before me, the appellant as the plaintiff had by a plaint dated October 16, 2020 sued the respondent herein seeking the following reliefs:
  - (a) A permanent injunction does issue restraining the defendant from interfering with the plaintiff's peaceful use and occupation of LR No Nyeri/Naromoru/3730 and Nyeri/Naromoru/3731;
  - (b) That the plaintiff be declared the rightful owner of Nyeri Naromoru/3730 and Nyeri/Naromoru/3731 and title deeds issued in his name;
  - (c) Any other order that the court deems fit; and
  - (d) Costs of the suit.
7. Having heard the matter to conclusion and by the judgment rendered on November 11, 2021 as aforesaid, the learned principal magistrate determined that the appellant had failed to prove that he had purchased the two parcels of land and proceeded to dismiss the appellant's suit with costs to the respondent. Those are the order this court is being asked to stay.
8. As it were, the effect of the orders dismissing the suit amounted to a negative order. That was not an order capable of being stayed in the manner sought herein as the appellant has lost nothing. The dismissal of his suit simply means that the appellant stays in the situation he was before coming to court and therefore the issues of substantial loss that he is likely to suffer and the appeal being rendered nugatory do not arise.
9. It follows that I am not persuaded that there is any merit in the motion dated December 10, 2021. The same is dismissed with costs.

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

In the presence of:

Ms Nanjala holding brief for Ombongi for the appellant/applicant

No appearance for the respondents

Court assistant - Kendi

.....



**J. O. Olola**  
**JUDGE**

