



**Mudogo & 23 others v Chindia (Environment and Land Appeal  
E014 of 2022) [2022] KEELC 15235 (KLR) (7 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15235 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA  
ENVIRONMENT AND LAND APPEAL E014 OF 2022  
DO OHUNGO, J  
DECEMBER 7, 2022**

**BETWEEN**

**MUREFU MUDOGO & 23 OTHERS ..... APPELLANT**

**AND**

**GRACE VILEGWA CHINDIA ..... RESPONDENT**

**RULING**

1. By Notice of Motion dated August 4, 2022, the appellants seek the following orders:
  1. [Spent]
  2. [Spent]
  3. [Spent]
  4. That pending the hearing and determination of the appeal herein there be stay of execution of the Senior Principal Court Judgment dated May 12, 2022 in Butali SPM ELC No 16 of 2021.
  5. That such orders as shall meet the ends of justice be made in this (sic) circumstances.
6. That the cost of this application be provided for.
2. The application is supported by an affidavit sworn by the applicant who deposed that upon the subordinate court's delivery of judgment in the respondent's favour, the respondent extracted a decree and further obtained an order for security in readiness for eviction of the appellants from the suit property. The applicant therefore prayed that there be stay of execution pending the hearing and final determination of the appeal herein.
3. The respondent opposed the application through a replying affidavit in which she deposed that she has extracted the decree of court for eviction of the appellants and further that she also filed an ex parte application dated May 16, 2022 seeking police security during the eviction process and that



the application was allowed by the subordinate court. She stated that the applicants do not have any tangible grounds for appeal and their application should be dismissed since they have engaged in unethical conduct by forum shopping.

4. The application was canvassed through written submissions. I have considered the application, the affidavits, and the parties' submissions. The court's jurisdiction to grant stay of execution pending appeal is guided by Order 42 rule 6 (1) and (2) of the *Civil Procedure Rules, 2010*. An applicant seeking stay of execution pending appeal must demonstrate that substantial loss will result to him if stay is not granted, and that the application has been made without unreasonable delay. The applicant is further required to give such security as the court may order for the due performance of the decree. See *Kenya Power & Lighting Co Ltd v Kigaita Ngare Unduthu & 36 others* [2020] eKLR and *Kenya Shell Limited v Benjamin Karuga Kibiru & another* [1986] eKLR.
5. The parties tended to delve into the merits of the appeal. I have nevertheless striven to capture the salient issues while keeping within the principles applicable to an application for stay of execution pending appeal under Order 42 rule 6 (1) and (2) of the *Civil Procedure Rules, 2010*. Consideration of the merits of the appeal is not one of the said principles.
6. The decree of the subordinate court is inter alia for eviction of the appellants. The respondent has indicated in the replying affidavit that she is intent on proceeding with eviction. An eviction prior to determination of this appeal will no doubt amount to substantial loss on the part of the appellants.
7. The subject judgment was delivered on May 12, 2022 while this appeal was filed on May 27, 2022. The application under consideration was filed on August 10, 2022, some three months after the appeal was filed. In the circumstances of the appeal, I do not consider a delay of three months to be unreasonable. Regarding the issue of security for the due performance of the decree, I note that the subject decree is not a monetary one save for the issue of costs. I see no valid reason to warrant monetarising the decree beyond what already exists. I will not impose any security but will compensate for its absence by giving directions to facilitate early hearing and determination of the appeal.
8. In view of the foregoing, I am persuaded that a case has been made for granting stay of execution pending hearing and determination of this appeal. The appellants are however warned that the stay orders may be vacated if they do not proactively prosecute this appeal.
9. In the result, I make the following orders:
  - a. Pending the hearing and determination of the appeal herein there be stay of execution of the judgment delivered on May 12, 2022 in Butali Senior Principal Magistrate's Court ELC No 16 of 2021 (OS).
  - b. Costs of the application shall be in the appeal.

**DATED, SIGNED, AND DELIVERED AT KAKAMEGA THIS 7<sup>TH</sup> DAY OF DECEMBER 2022.**

**D. O. OHUNGO**

**JUDGE**

**Delivered in open court in the presence of:**

Mr Khayumbi for the appellants

Ms Wanyonyi for the respondent

Court Assistant: E. Juma

