



M'mwenda (Suing as Legal Representative of Julius M'Mwenda) v Mure (Environment & Land Case E002 of 2022) [2022] KEELC 15129 (KLR) (5 December 2022) (Ruling)

Neutral citation: [2022] KEELC 15129 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO
ENVIRONMENT & LAND CASE E002 OF 2022
PM NJOROGE, J
DECEMBER 5, 2022**

BETWEEN

EVANGELINE KAUNGU M'MWENDA (SUING AS LEGAL REPRESENTATIVE OF JULIUS M'MWENDA) APPLICANT

AND

FATUMA MOHAMMED MURE DEFENDANT

RULING

1. This application states that it has been brought to court under Sections 1A, 3A of the [Civil Procedure Act](#) and Under Article 159 of [the Constitution](#) of Kenya. The applications is dated 5/7/2022.
2. The application seeks orders that:
 - a. The honourable court be pleased to hear this application on a priority basis.
 - b. The honourable court be pleased to temporary (sic) stay eviction of the applicant from the suit premises pending the hearing of this application interparties.
 - c. The honourable court be pleased to stay the eviction of the applicant from L.R No.7918/75 Isiolo Township for a period of 6 months to enable the applicant vacate the suit premises in peace.
 - d. Any other orders as may meet the ends of justice.
 - e. Costs be provided for.
3. The application is supported by the affidavit of Evangeline Kaungu M'mwenda, the applicant and has the following grounds;
 1. The applicant is aged 90 years and has developed the suit premises and evicting her without giving her time to digest the effects of the courts ruling will be detrimental to her health.



2. The suit premises are occupied by tenants who if evicted without notice will pursue the applicant for damages thus escalating the applicant's problems.
3. If this request is not granted forthwith the application will be overtaken by events and the applicant will suffer irreparable damages.
4. The application was canvassed by way of written submissions.
5. A conspectus of the submissions filed by the applicant's advocate is that she is asking the court to exercise its discretion and stay execution of her eviction for only 6 months to enable her to plan her exit. She is categorical that she has not filed an appeal and does not intend to do so but pleads with the court that it clothes itself with a human face and delay her eviction from the suit property for a period of six months.

The court is also asked to take into account that the applicant is over 90 years old.

6. The respondent through his advocate opposes the application and says that it is an abuse of the court process and has no merit. He says that it is the duty of the court to allow a party to enjoy the fruits of the apposite Judgement. As a persuasive authority, he proffers the case of *Justus Kyalo Musyoka Versus John Kivungo* [2019] eKLR where the court opined as follows;

“On the other hand, the general rule is that the court ought not to deny a successful litigant of the fruits of his Judgement.... In the application of that ordinary principle, the court must have its light family fixed on upholding the overriding objective of the rules of procedure for handling Civil Cases in courts, which is to do justice in accordance with the law and to prevent the abuse of the process of the court.”

7. This is a matter which is veritably suit generis. In its own right the application is a judicial humdinger. The applicant constructively agrees with the decision of the court for which she seeks a stay of execution. On account of her age she is merely requesting the court to contrive a human face and delay execution of the court's decision on account of her advanced age. As a human being, I pity the fact that at 90 years the applicant will be forced to move out of the subject property by the dictates of the applicable law. But a court of justice only relies on availed evidence and is not allowed to take into account the age or any other specificities or peculiarities concerning litigants.
8. There being no appeal against this court's decision delivered on 4th July, 2022, the status of this matter is that it is fait accompli. As a result, what the court intended has already been done and settled and therefore this judge has no mandate to do any meaningful thing. By operation of the law, the judge has been rendered judicially and legally impotent. Simply put, he is functus officio. Luckily for the applicant, the Judicial process in this matter is almost in the sixth month, and therefore, fortuitously the applicant has had her eviction delayed for almost the period she had sought in this application.
9. In the circumstances, this court issues the following orders;
 - a. This application is dismissed.
 - b. Costs for this application shall follow the event and are awarded to the respondent.

DELIVERED IN OPEN COURT AT ISIOLO THIS 5TH DAY OF DECEMBER, 2022 IN THE PRESENCE OF;

Court assistant: Balozi

Miss Nyasani holding for brief Kimathi Kiara



Miss Nyasani holding brief for Manasses Kariuki for the Defendant

HON. JUSTICE P.M NJOROGE

JUDGE

