



**Mukuha & 3 others v Kurgat (Environment & Land Case 175 of 2017)
[2022] KEELC 15128 (KLR) (5 December 2022) (Ruling)**

Neutral citation: [2022] KEELC 15128 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 175 OF 2017
FM NJOROGE, J
DECEMBER 5, 2022**

BETWEEN

**PAUL RUGI MUKUHA 1ST PLAINTIFF
STEPHEN WACHIRA CHUTHA 2ND PLAINTIFF
SIMON KINYINGI GACHOKA 3RD PLAINTIFF
STEPHEN WAITHAKA GIKONYO 4TH PLAINTIFF**

AND

LOYCE KURGAT DEFENDANT

RULING

1. The motion dated July 7, 2022 seeks a stay of execution of the decree pending the determination of the appeal against the judgment of this court delivered on February 28, 2022. I have noted that there is a notice of appeal that was filed on March 15, 2022 by the applicants and therefore I deem it that there is an appeal in existence as required by the provision of order 42 rule 6 (4) of the [Civil Procedure Rules](#).
2. The next factor to consider is whether the substantial loss may result to the applicants unless the order of stay is issued by this court. In their application the applicants have averred that the respondent has already issued the tenants occupying the suit premises 14 days’ notice with effect from July 1, 2022 to vacate, and they may suffer irreparable loss and the appeal may be rendered nugatory and I agree with then on that issue entirely.
3. Concerning whether there was inordinate delay in the filing of the application, I note that the judgment was delivered on February 28, 2022 while the instant application was filed on July 13, 2022. That is after a period of about four and a half months which I think is not inordinate.
4. Regarding security, I am of the view that all cases ought to be taken consideration of with due regard to the specific circumstances of each case. In the present case the respondent has been said to have not



ever had possession of the premises, a fact she does not deny. I think this is a case in which security for costs can be furnished.

5. I find that the application dated July 7, 2022 has merit and I grant prayer No 1 thereof, that is, a stay of execution of judgment and decree in the instant case on condition that the applicants shall file and serve their record of appeal and also, that they shall deposit Kshs 100,000/= as security for costs in an interest earning account opened in the joint names of both counsel's advocates in a reputable bank within 60 days of this order, in default of which the stay order hereby issued shall automatically lapse and be deemed to be vacated.

DATED, SIGNED AND DELIVERED AT NAKURU VIA ELECTRONIC MAIL ON THIS 5TH DAY OF DECEMBER, 2022.

MWANGI NJOROGE

JUDGE, ELC, NAKURU

