



REPUBLIC OF KENYA



**KENYA LAW**  
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**Kuria v Mburu (Environment & Land Case 145 of 2021)  
[2025] KEELC 313 (KLR) (4 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 313 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT & LAND CASE 145 OF 2021**

**BM EBOSO, J**

**FEBRUARY 4, 2025**

**BETWEEN**

**NAOMI WANGUI KURIA ..... PLAINTIFF**

**AND**

**ERNEST MAINA MBURU ..... DEFENDANT**

**RULING**

1. Through the notice of motion dated 27/5/2024, the plaintiff in this suit seeks the following verbatim orders:
  1. Spent
  2. Spent
  3. That the Honourable Court be pleased to stay any further proceedings and in particular the execution of the ruling delivered on 3rd March 2024 pending the hearing and determination of the Appeal filed herein(sic) being Civil Appeal No. E338 of 2023.
  4. That the Honourable Court be pleased to issue any other orders it may deem just for purposes of preservation of the appeal filed herein.[sic]
  5. That the costs of this application be provided for.
2. The application was premised on the grounds outlined in the motion and in the applicant's supporting affidavit dated 27/5/2024. It was canvassed through written submissions dated 23/9/2024, filed by M/s Mbugua Ndiritu and Company Advocates. The case of the applicant is that, through a ruling rendered on 20/3/2023, this Court dismissed this suit. Aggrieved by the decision of this Court, she filed an appeal in the Court of Appeal. Her appeal is pending disposal by the Court of Appeal. She contends that unless orders of stay of execution are granted by this Court, the 3rd defendant is likely



- to execute the ruling and render her appeal nugatory and an academic exercise. She urges the Court to allow the application.
3. The 3rd defendant opposed the application through grounds of opposition and written submissions dated 27/6/2024. The case of the 3rd respondent is that:
    - (i) this court is functus officio;
    - (ii) the application is bad in law and an abuse of the process of the court;
    - (iii) the application is misconceived, incompetent and without merit;
    - (iv) there has been inordinate delay in bringing this application. The 3rd defendant urges the court to reject the application
  4. The Court has considered the application, the response to the application, and the parties' respective submissions. The two key issues that fall for determination in the application are:
    - (i) Whether the application meets the criteria for an order of stay of execution; and
    - (ii) Whether the application meets the criteria for an order of stay of proceedings. I will be brief in my analysis and disposal of the two issues.
  5. Does the application meet the criteria for an order of stay of execution? First, the applicant prayed for an order staying the ruling delivered on "3rd March 2024". I have perused the court record. No ruling was delivered on 3rd March 2023. The ruling which struck out the plaintiff's suit was rendered on 20/3/2023.
  6. Proceeding from the premise that the applicant seeks the stay order in relation to the ruling of 20/3/2023, it is clear that the ultimate order in the said ruling was negative in nature. It struck out the plaintiff's suit for being res judicata. This being the case, there is nothing to stay in terms of both execution and trial proceedings.
  7. Thirdly, no attempt was made to satisfy the requirements of Order 42 rule 6(2) of the Civil Procedure Rules. The ruling striking out the plaintiff's suit was rendered on 20/3/2023. The application for stay of execution was brought on 27/5/2024. This is a delay of 14 months. No proper excusable reason has been tendered to justify the delay of 14 months. Secondly, no attempt has been made to demonstrate the likely substantial loss and the proposed security. For the above reasons, it is the finding of this Court that the application dated 27/5/2024 does not meet the criteria for an order of stay of execution.
  8. On stay of proceedings, this suit was struck out on 20/3/2023. No trial proceedings can take place in a suit that has been struck out. The plea for an order of stay of proceedings is therefore superfluous.
  9. For the above reasons, the court has not found a proper basis upon which to exercise the jurisdiction to grant orders of stay of proceedings or stay of execution. Put differently, there is no merit in the application dated 27/5/2024. The same is rejected and dismissed for lack of merit. The applicant shall bear costs of the application.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 4TH DAY OF FEBRUARY, 2025**

**B M EBOSO [MR]**

**JUDGE**

In the Presence of:

Kariuki for the 3rd Defendant



