



**M’Mukiira & another v Magiri & another (Environment and Land Appeal E018 of 2024) [2025] KEELC 770 (KLR) (10 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 770 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E018 OF 2024  
JO MBOYA, J  
FEBRUARY 10, 2025**

**BETWEEN**

**JOSEPH KOOME M’MUKIIRA & ANOTHER & ANOTHER & ANOTHER & ANOTHER ..... APPELLANT**

**AND**

**CHARLES MAGIRI & ANOTHER & ANOTHER & ANOTHER & ANOTHER ..... RESPONDENT**

**RULING**

1. The 1<sup>st</sup> Appellant and now the Applicant [who appears in person] has filed the application dated 27<sup>th</sup> January 2025; and wherein the Applicant essentially seeks for an order to discharge and/or lift the orders of inhibition and /or restrictions that were entered upon and registered against the title of the suit property.
2. Upon being served with the Application under reference, the Respondent filed and served a Replying affidavit sworn on the 5<sup>th</sup> of February 2025; and wherein the Respondent has opposed the application.
3. The Application under reference came up for hearing on 10<sup>th</sup> February 2025 whereupon the court ordered and directed that the same [Application] be canvassed vide oral submissions. For coherence, the submissions by and on behalf of the parties are on record.
4. Having reviewed and considered the application and the affidavit evidence on record and having considered the submissions canvassed by and on behalf of the Parties; I find that there is only one singular and or salutary issue for determination, namely; whether there is any legal bar to prevent the removal of the inhibition and/or restriction which underpins the current application.
5. Suffice it to state that the Applicant filed the instant Appeal and wherein same [Applicant] sought to impugn the Judgment and the decree of the lower court [the Chief Magistrates Court].



6. Pertinently, the Judgment and decree of the lower court [the impugned Judgment] were quashed and/or varied and thereafter the court entered judgment in favour of the Applicant and whereupon the court directed that the Applicant be registered as the owner of the suit property on account of adverse possession.
7. Nevertheless, the Respondents herein appear to have been aggrieved by the judgment and the decree of this court [differently constituted] and thereby filed a Notice of appeal thus intimating their intention to appeal to the Court of Appeal.
8. Additionally, the Respondent also filed an application for stay of execution of the Judgment and decree of the court pending the hearing and determination of the appeal. Suffice it to state that the application dated 20<sup>th</sup> November 2024 was heard and determined vide the ruling of this court rendered on 18<sup>th</sup> of December 2024; and whereupon the court dismissed the application under reference.
9. Following the dismissal of the application for stay of execution pending an appeal; there is no bar to the execution of the judgment and decree of the court. In any event, there is no gainsaying that the existence of an appeal or an intended appeal doesn't by and of itself constitute an order of stay of execution or at all. [see the provisions of Order 42 Rule 6 [1] of the Civil Procedure Rules 2010].
10. Furthermore, it is not lost on this court that where a decree has been issued, the beneficiary of the decree of the court is obliged to benefit from the fruit of the decree and/or judgment unless there exists a compelling reason and or circumstance to the contrary. [See the decision of the Court of Appeal in the case on Butt Vs Restriction Tribunal (1979) eKLR; See also Machira vs the East African Standard Ltd [2002] eKLR].
11. In the premises and taking into account, the provisions of Sections 1A and 1B of the [Civil Procedure Act](#) Chapter 21 Laws of Kenya and coupled with the provisions of Article 159 (2) (b) of [the Constitution](#) 2010; the court finds and holds that the application beforehand is merited.
12. Consequently, and in this regard, the same [Application] be and is hereby allowed with costs.
13. In a nutshell, the application dated 27<sup>th</sup> of January 2025 be and is hereby allowed and the inhibition and or restriction that was entered upon and or against the title of the suit property be and is hereby vacated, lifted and or removed.
14. Regarding costs of the Application, I find and hold that same [Costs] ordinarily follow the event, unless otherwise directed by the Court. However, in respect of the instant matter, there is no basis to deny the Applicant the costs of the Application. In this regard, the Costs be and are hereby awarded to the Applicant.
15. It is so ordered.

**DATED SIGNED AND DELIVERED ON THE 10<sup>TH</sup> DAY OF FEBRUARY, 2025**

**OGUTTU MBOYA**

**JUDGE**

In the presence of

Mr. Mutuma – Court Assistant

Joseph Koome M'Mukiira – Present and appearing in person

Ms. Maina for the Respondent

