



**Munyi v Njeru & another (Legal Representatie of the Estate of
Nephat Gikunju Karinga (Deceased)) (Environment and Land Appeal
E032 of 2024) [2025] KEELC 3087 (KLR) (10 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3087 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT EMBU
ENVIRONMENT AND LAND APPEAL E032 OF 2024
AK BOR, J
MARCH 10, 2025**

BETWEEN

JOSEPH NTHIGA MUNYI APPELLANT

AND

PETER MURIUKI NJERU 1ST RESPONDENT

JOSEPH KANGANGI GIKUNJU 2ND RESPONDENT

**LEGAL REPRESENTATIE OF THE ESTATE OF NEPHAT GIKUNJU KARINGA
(DECEASED)**

RULING

1. The Appellant filed the application dated 24/7/2024 seeking an order for stay of execution of the judgement issued on 19/7/2024 by Hon. R Njoki Kahara (PM) in Siakago MELC No. 101 of 2018 pending hearing and determination of the appeal. He also sought costs of the application.
2. The application was made on the grounds that the Appellant bought the land known as Mbeere/ Kirima/1087 (“the suit property”) from Nephat Gikunju Karinga (deceased) in 2009 and was given vacant possession of the land. He claimed that he constructed houses and had been cultivating on the land to date. The trial court in its judgement issued a permanent injunction restraining the Appellant from entering, utilising, occupying or interfering with the suit property. He was aggrieved by the findings of the court and lodged an appeal.
3. He claimed that the 1st Respondent had attempted to take possession of the suit property since the judgement was delivered. He is apprehensive that if the judgement were executed he would suffer irreparable loss since he will lose the several developments he has made on the suit property before the appeal is heard. He seeks to have the status quo maintained on the suit property pending determination of the appeal. He contended that no prejudice would be occasioned to the Respondents if the



application were allowed and added that he was ready to abide by the terms and conditions that the court may order as to security for costs.

4. The Appellant swore the affidavit in support of the application and attached a copy of the Memorandum of Appeal and the letter requesting for proceedings.
5. The application was opposed by Joseph Kangangi Gikunju vide the replying affidavit in which he averred that the Appellant had not demonstrated either in the Magistrates Court or in this application that he was in occupation of the suit property or that he had made any developments on the land. It was his contention that the suit land belonged to the Estate of Nephath Gikunju Karinga (deceased) and as the administrator of his estate, he should have the right to deal with the suit property without interference or restriction. He denied that the Appellant was given vacant possession of the land or that the Appellant's appeal raised any arguable grounds.
6. The Appellant filed his submissions where he mainly reiterated the grounds set out in his application. He submitted that he had met the conditions for grant of stay of execution set out in Order 42 Rule 6 of the Civil Procedure Rules and that he had filed the application without undue delay.
7. The 1st Respondent filed submissions and denied that the Appellant had met the conditions for grant of stay of execution. He contended that the Appellant had not demonstrated what loss he stands to suffer nor did he offer any security for costs. He denied the Appellants occupation of the suit land or that he had made developments on the land.
8. The issue for determination is whether the court should stay execution of the judgement of the Magistrate's Court pending the appeal. In order to succeed on an application for stay of execution, an applicant must satisfy the court that he has brought the application without unreasonable delay, that substantial loss may result to the applicant unless stay is granted, and that such security as to costs has been given by the applicant.
9. The judgement of the trial court was delivered on 19/07/2024. The present application was filed on 30/7/2024 meaning it was brought without delay.
10. The Appellant claimed that he stands to suffer substantial loss should the orders of stay not be granted as he stands to lose developments he had made on the suit property. The Respondents denied that any such developments were on the land. They also denied that the Appellant was in possession or occupation of the suit property. The Appellant's original claim was founded on the fact that he purchased the suit property from Nephath Gikunju Kiringi (deceased). During trial, he produced a copy of the sale agreement which he entered into with Nephath Gikunju for the sale of the suit property. He also produced acknowledgements for the receipt of the purchase price by Nephath. During the hearing, his legal representative acknowledged that there were structures belonging to the Appellant on the suit property. The Appellant has therefore demonstrated that he stands to suffer substantial loss should the orders for stay of execution not be granted. The appeal may also be rendered nugatory.
11. The court allows the application dated 24/7/2024. The Appellant is directed to deposit the sum of Kshs. 50,000/= as security for costs in an interest earning account in the joint names of the advocates for both parties within 30 days of the date of this ruling.

The costs of the application shall abide the outcome of the appeal.

DELIVERED VIRTUALLY AT EMBU THIS 10TH DAY OF MARCH 2025.

K. BOR

JUDGE



In the presence of: -

Ms. Linda Otieno for the Appellant

Mr. Duncan Okwaro for the Respondents

