



REPUBLIC OF KENYA



**Mwachihi v Kamunya & 9 others (Environment & Land Case
5 of 2018) [2025] KEELC 3725 (KLR) (8 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3725 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA
ENVIRONMENT & LAND CASE 5 OF 2018**

YM ANGIMA, J

MAY 8, 2025

BETWEEN

JUMA MOHAMED MWACHIHI PLAINTIFF

AND

SAMUEL HEZRON KAMUNYA 1ST DEFENDANT

SAMUEL MWANGI MBURU 2ND DEFENDANT

CYRUS GICHOI RITUGA 3RD DEFENDANT

PATRICK MATHENGE MBUTHIA 4TH DEFENDANT

SOLOMON WAO ODHIAMBO 5TH DEFENDANT

RUTHY MUGURE KARIUKI 6TH DEFENDANT

ELIZABETH WANJIRU MAINA 7TH DEFENDANT

ELIZABETH WANJIRU MAINA 8TH DEFENDANT

ROSE AKINYI OLEWE 9TH DEFENDANT

NANCY N'THAMBI KARIUKI 10TH DEFENDANT

RULING

1. There are two pending applications in their matter. The first is the plaintiff's notice of motion dated 16.02.2024 by which the plaintiff sought police assistance to execute the decree dated 20.01.2022. The second is the 2nd defendant's notice of motion dated 16.12.2024 seeking a stay of execution of the decree of pending the hearing and determination of Mombasa Civil Appeal on E238 of 2024.
2. Both parties filed replying affidavits in opposition to the applications and the 2nd defendant even filed a supplementary affidavit in response to the plaintiff's replying affidavit.



3. Given the nature of the applications, it is obvious that the application for stay pending appeal ought to be heard and determined first. When the matter came up for directions on 13.02.2025 it was directed that the parties shall file and exchange their respective submissions on the application for stay pending appeal. The record shows that the 2nd defendant filed his submissions dated 24.02.2025 but the plaintiff's submissions were not on record by the time of preparation the ruling.
4. The record shows that when the plaintiff's advocate attended court on 13.02.2025 he informed the court that the plaintiff had no intention of evicting the 2nd defendant until the pending appeal is heard and determined. He further informed the court that he had sent an email to that effect to the 2nd defendant's advocate.
5. The court is thus inclined to grant the 2nd defendant a conditional stay of execution of the decree. However, the court shall make an order for a deposit for security for due performance of the decree relating to payment of costs of the suit.
6. For the foregoing reasons the court makes the following orders;
 - a. There shall be a stay of execution of the decree dated 20.01.2022 for a period of 2 years from the date hereof or until the hearing and determination of Mombasa Civil Appeal No. E238 of 2024, whichever comes first.
 - b. The 2nd defendant shall deposit in court a sum of Kshs. 100,000.00 as security for due performance of the decree within 30 days from the date hereof as a condition for stay.
 - c. The plaintiff is hereby awarded costs of the applications.

Orders accordingly.

RULING DATED AND SIGNED AT MOMBASA AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS ON THIS 8TH DAY OF MAY, 2025.

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Y. M. ANGIMA

JUDGE

In the presence of:

Mr. Maundu for plaintiff

No appearance for (case withdrawn) 1st defendant

Ms. Matoke for the 2nd defendant

No appearance for 3rd to 10th defendants

Gillian Court assistant

