



**Mungai v Njoroge, Githua, Waithaka and Kinuu (All sued in their capacity as joint liquidation of Kenya Planters Cooperative Union Limited) & 2 others (Environment & Land Case 8 of 2018) [2025] KEELC 3612 (KLR) (6 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3612 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT & LAND CASE 8 OF 2018  
MN GICHERU, J  
MAY 6, 2025  
(FORMERLY NAIROBI ELCC NO. 1469 OF 2016  
CONSOLIDATED WITH NAIROBI HCCC NO:779 OF 2009)**

**BETWEEN**

**ROBERT KINUTHIA MUNGAI ..... PLAINTIFF**

**AND**

**STEPHEN KAMAU NJOROGE, DORIS WANGUI GITHUA, ANTHONY  
MAINA WAITTHAK AND JOYCE NKIROTE KINUU (ALL SUED IN THEIR  
CAPACITY AS JOINT LIQUIDATION OF KENYA PLANTERS COOPERATIVE  
UNION LIMITED) ..... 1<sup>ST</sup> DEFENDANT**

**FIKAH ACRES LIMITED ..... 2<sup>ND</sup> DEFENDANT**

**CHIEF LAND REGISTRAR ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. This ruling is on the notice of motion dated 10-11-2024. The motion which is by the 2<sup>nd</sup> Defendant is brought under Order 42 rule 6 Civil Procedure Rules, Sections 1A, 1B, 3 and 3A of the [Civil Procedure Act](#), the inherent powers of the Court and the enabling provisions of Law. The motion seeks the following residual orders.
  3. Stay of execution of the judgment and decree delivered on 7-11-24 pending the hearing and determination of the intended appeal.
  4. That costs be provided for.
2. The motion is based on seven (7) grounds and is supported by an affidavit sworn by Joel Kibe who is a director of 2<sup>nd</sup> Defendant. In brief the Applicant urges as follows. Firstly, this court delivered a



judgment on 7-11-2024 in favour of the Plaintiff. Secondly, the court ordered the eviction of the 2<sup>nd</sup> Defendant from the suit land. Thirdly, the 2<sup>nd</sup> Defendant, aggrieved by the decision of the Court has now appealed against the decision to the Court of Appeal. Fourthly, unless the order of stay is issued, the Applicant shall suffer irreparable loss and injury and the intended appeal shall be rendered nugatory and merely academic. Fifthly, the Respondent will not be prejudiced if the orders sought are allowed.

In a supplementary affidavit dated 27-1-2025, the Applicant has added the appeal has already been filed and it is Court of Appeal Nyeri Appeal No. E218 of 2024 and finally that there has been an attempt to evict the Respondent using Kenya Police hence the added urgency of the matter.

3. The motion is opposed by the Plaintiff who has sworn a replying affidavit dated 2-12-2024 in which he replies as follows. Firstly, on 13-11-2024, the court issued a decree as per the judgment of 10-11-24. Then on 15-11-2024, the 2<sup>nd</sup> Defendant and its agent were evicted from the suit land by Chador Auctioneers in the presence of the OCS Kaguku Police Station. There was an attempted re-entry to the land with the support of the OCPD but it was too late. The application for stay is therefore overtaken by events.

Secondly, the 2<sup>nd</sup> Defendant has been degrading the suit land through quarrying and his continued occupation is only for exploitation of the land and not its improvement.

For the above and other reasons, the Plaintiff prays for the dismissal of the 2<sup>nd</sup> Defendant's motion.

4. Counsel for the parties filed submissions dated 24-1-25, 5-2-2025 and 17-2-2025. The said submissions have addressed the issues as follows.
  - i. Whether the Applicant will suffer substantial loss if the motion is not allowed.
  - ii. Whether the Application has been made without unreasonable delay.
  - iii. Whether security for the due performance of the decree can or has been provided.
5. I have carefully considered the motion in its entirety including the grounds, supporting affidavit and supplementary affidavits, replying affidavits, the annexures, the written submissions as well as the law cited therein.
6. It is trite law that for an order for stay of execution pending appeal to be allowed, the Applicant must prove the three conditions of substantial loss, bring the application in good time and provide security for the due performance of the decree. The three prerequisites to the grant of stay of execution must all be fulfilled. Failure to fulfill one condition renders the entire motion as lacking in merit.
7. Looking at the first condition, I find that the 2<sup>nd</sup> Defendant has not proved that it stands to suffer substantial loss if the motion is not granted. The two affidavits by Joel Kibe are very scanty on what it is that is at stake. There is no mention of any activities on the land that are in jeopardy. I have not seen even a single picture of a dwelling house or crops on the land. The affidavit of 21-11-2023 dwells mostly on the history of the land and not at what is at stake now. The affidavit of 27-1-25 highlights the need for stay without saying what the second Defendant does on the land.

On the other hand, it is the Plaintiff who brings out the degradation on the land through the quarrying, activities of the 2<sup>nd</sup> Defendant. The 2<sup>nd</sup> Defendant has not proved substantial loss especially when there is uncontroverted evidence that all that they are doing is degrading the suit land.
8. On the second condition, I find that the motion was filed within three days of the date of judgment. It was therefore filed without any delay.



9. I have not seen anything in the seven grounds or in the two affidavits where the 2<sup>nd</sup> Defendant is offering any security for the due performance of the decree that may be passed against them. Had they done so, they would be showing seriousness with their appeal and confidence that they have a good case. While it is true that the court could impose conditions in this regard, I find it unnecessary because I find the motion has no merit on account of failure to prove substantial loss on the part of the 2<sup>nd</sup> Defendant.

For the above stated reasons I find no merit in the motion dated November 10, 2024 and I dismiss it with costs.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 6<sup>TH</sup> DAY OF MAY, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr Muturi

1<sup>st</sup> Defendant's Counsel – Mr Muriuki

2<sup>nd</sup> Defendant's Counsel – Mr Njenga

3<sup>rd</sup> Defendant's Counsel - Absent

