



Kinyanjui v Ngugi & 2 others (Environment and Land Appeal E052 of 2024) [2025] KEELC 4327 (KLR) (10 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4327 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E052 OF 2024**

**MN GICHERU, J
JUNE 10, 2025**

BETWEEN

JOSEPH MWANGI KINYANJUI APPELLANT

AND

KANINI MALECH NGUGI 1ST RESPONDENT

THE LAND REGISTRAR – MURANG'A 2ND RESPONDENT

MUGUNDI SELF HELP GROUP THROUGH THEIR REGISTERED TRUSTEES 3RD RESPONDENT

(Being an Application for a stay of the Judgment issued at the Senior Resident Magistrate's Court in Kenol pending the lodging, hearing and determination of an intended Appeal of the Judgement delivered by Hon. Dr. Sheila K. Nyaga at the Senior Resident Magistrate's in KENOL MCELC NO.4 OF 2024 dated 25th November, 2024)

RULING

1. This ruling is on the notice of motion dated 16-12-2024. The motion which is by the Appellant is brought under Sections 79G, 3 and 3A of the *Civil Procedure Act*, Orders 42 rule 6(1) and (2), 50 rules 1 and 3 of the *Civil Procedure Rules* 2010 and all other enabling provisions of law and seeks the following residual orders.

4. That pending the hearing and determination of the appeal, there be a stay of execution of the judgment dated 25-11-2024 in Kenol MCELC No. 4 of 2024 by any means whatsoever.

2. The motion is based on the following grounds. One, the 1st Respondent has already extracted the decree in the lower court suit and is desirous of executing the same.

Secondly, the judgment delivered on 25-11-24 was in favour of the 1st Respondent and it was in the following terms.



- a. The suit land having been sold to the Plaintiff was not available to the 2nd Defendant.
- b. An order directing the 3rd Respondent to cancel the title deed issued to the 2nd Defendant and register the suit land to the Plaintiff.
- c. A permanent injunction to issue restraining the Defendants, their servants, agents, employees in any manner from interfering with the Plaintiff's ownership and control of L.R No. Kakuzi/Kirimiri/Block 9/1546.
- d. An order of eviction of the 2nd Defendant from the suit land under the supervision of the OCS Makuyu Police Station.
- e. Costs to the Plaintiff.

Thirdly, the judgment failed to appreciate or give due consideration to the Respondent's case and evidence filed in Court. Fourthly, there is a need for the Court to order stay of execution pending the hearing and determination of the appeal. Finally, the appeal has high chances of success. For the above and other reasons, the Appellant prays for the orders in the motion. In addition to the above grounds, the Appellant has filed a supporting affidavit dated 16-12-2024 which has a copy of the decree and the judgment as annexures.

3. The motion is opposed by the 1st Respondent who has sworn a replying affidavit dated 5-2-2025 in which she deposes as follows. One, the notice of motion is frivolous, full of falsehoods and misrepresentation and ought to be dismissed. Two, the motion is in bad faith and the appeal has no chance of success. Three, if the order of stay is granted in favour of the Appellant, it would be prejudicial to the 1st Respondent since she has enjoyed quiet possession of the suit land since the year 2008. Three, the 1st Respondent paid the Appellant the full purchase price for the suit land and this is not in dispute. Four, the Appellant waited for 29 days to file the appeal and by then, the decree had been filed at the Land registry. Five, even if the orders sought are granted, the Appellant would not benefit in any way whatsoever since he is not the owner of the suit land and he has already sold it. Six, if the court were to find that the suit land belongs to the 2nd Respondent, the Applicant would be awarded damages which would be adequate compensation. Seven, the 1st Respondent stands to suffer insurmountable loss if the orders are granted because she has already buried a relative in the land. For the above and other reasons, she prays for the dismissal of the motion with costs.
4. Counsel for the parties filed written submissions dated 6-3-2025 and 23-3-2025. The Appellant's counsel identified four issues for determination as follows.
 - i. Whether the application was made without unreasonable delay.
 - ii. Whether the Applicant has an arguable case.
 - iii. Whether the appeal will be rendered nugatory if the orders sought are not granted.
 - iv. Likelihood of substantial loss.

The 1st Respondent's counsel agrees that these are the issues for determination.

5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit, the replying affidavit, the written submissions as well as the case law cited therein. I find that for the application by the Appellant to succeed, he must prove three things. Firstly, he must prove that he stands to suffer substantial loss. Secondly, the application must have been filed without unreasonable delay. Thirdly, the Applicant must give security for the due performance of such decree or order as may ultimately be binding on him as the court may order. All these three conditions must be



satisfied together and failure to satisfy even one of them means that the application fails. This is my understanding of Order 42 rule 6(2) of the Civil Procedure Rules.

6. Looking at the first ground, I find that the Appellant has not proved that he stands to suffer substantial loss. He has not shown what property he has on the suit land. He has not filed even a single photograph to prove that he has any structure on the land. In short he has not proved he has any stake on the suit land worth preserving through the order sought. It was incumbent upon him to prove substantial loss which he has failed to do.
7. Regarding the second condition, I find that the judgment was on 25-11-2024 and the current motion was filed on 19-12-2024. Under Section 79G of the *Civil Procedure Act*, an appeal from the lower court to the High Court shall be filed within a period of 30 days from the date of the decree or order appealed against. The current appeal having been filed within the 30 days of the judgment and decree of the lower court, I find that it was filed without unreasonable delay.
8. Finally on the third condition, I find that the Appellant has stated vide paragraph 6 of the affidavit dated 16-12-2024 that he is ready and willing to abide by any reasonable conditions that this court may order. That may be easier said than done. The 1st Respondent has stated that she has buried a relative on the suit land. There is no evidence from the Appellant to the contrary. The Appellant did not file a supplementary affidavit to rebut this deposition. I do not find what the Appellant can do to deal with this particular circumstance of the 1st Respondent's burial of kin on the suit land.
9. Since the Appellant has not satisfied the three conditions for stay of execution set out in Order 42 rule 6(2) of the Civil Procedure Rules, I find that the motion dated 16-12-2024 has no merit. I dismiss it.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 10TH DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Absent

Respondent's Counsel – Mr. Gatoto

