



REPUBLIC OF KENYA



KENYA LAW
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**Kisele & another v Mumu (Environment & Land Miscellaneous Case
E005 of 2023) [2025] KEELC 4936 (KLR) (3 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 4936 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MAKUENI
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2023**

EO OBAGA, J

JULY 3, 2025

BETWEEN

MANSON MUSYOKA KISELE 1ST APPLICANT

ALISON MUKUTI MUSYOKA 2ND APPLICANT

AND

REBECCA NTHENYA MUMO RESPONDENT

RULING

1. This is a ruling in respect of a Notice of Motion dated 28th February, 2023 in which the Applicant seek the following order:
 1. Spent
 2. Spent
 3. Spent
 4. That this honourable court be pleased to grant stay of proceedings in Makueni MCCC No. E061 OF 2021, Rebbecah Nthenya Mumu –vs- Manson Musyoka Kisele & Another pending the hearing and determination of Makueni court Civil Appeal No. E056 of 2022.
 5. That this honourable court be pleased to grant stay of execution of the decree issued on 2nd November, 2022 at the Senior Resident Magistrates’ court Makueni in Makueni MCCC No. E061 of 2021, Rebbecah Nthenya Mumu –vs- Manson Musyoka Kisele & Another pending the hearing and determination of Makueni Civil Appeal No. E056 of 2022.
 6. That the costs of this application be provided for.
2. The Applicants states that they have preferred an appeal against a judgment delivered on 7th September, 2022 in Makueni MCCC No. E061 of 2021 (Rebecca Nthenya Mumu –vs- Manson Musyoka Kisele



- & Another) vide appeal No. E056 of 2022 (Manson Musyoka Kisele & Another –vs- Rebbecah Nthenya Mumo). A memorandum of appeal was served upon the Respondent’s advocate.
3. On 7th December, 2022, the Respondent moved to land parcel No. 401 Kyamuoso Adjudication Section and fell down trees and destroyed crops thereon. The Applicants made a report of the incident to police. On 9th December, 2022, the Applicants were served with an application for contempt of court proceedings. The Applicants stated that the application had been set down for hearing on 25th April, 2023 before the trial court.
 4. The Applicants contend that it is the Respondent who is in contempt of court by trespassing on to parcel 401 Kyamuoso Land Adjudication Section. The deponent of the supporting affidavit states that he is in imminent threat of being committed to civil jail while he has an appeal pending. The Applicants state that the application for contempt is a tactic to delay the prosecution of their appeal which they have filed.
 5. The Applicants state that they are willing to abide by any condition which will be given for stay of proceedings and execution.
 6. The Respondent opposed the Applicants’ application through a replying affidavit sworn on 23rd March, 2023 as well as a preliminary objection filed on the same date. The Respondent contends that this application ought to have been filed in the appeal which the Applicants had filed and should not blame her for delay in prosecuting their appeal. The Respondent further contends that the Applicants have never filed any suit against her for which adverse orders would have been issued for her to be in contempt of the same.
 7. The Respondent states that this application has been filed separately so as to confuse the court. The Respondent denies being in contempt and avers that this application is meant to stall the prosecution of contempt proceedings.
 8. In a supplementary affidavit sworn on 19th June, 2023, the Applicants reiterate their averments in the supporting affidavit to the application that the Respondent is out to delay the finalization of their appeal as typed proceedings cannot be obtained while there are proceedings pending before the lower court. They state that the judgment of the lower court granted the Respondent occupation of matrimonial house but not to till the land. They further state there are no stringent rules of bringing applications for stay of proceedings as such application can even be made orally.
 9. The parties were directed to dispose of the application by way of written submissions on 9th October, 2023. The Applicants filed their submissions on 31st October, 2023. As at 31st May, 2025 when writing this ruling, the Respondent had not filed her submissions.
 10. I have considered the Applicants’ application, the opposition to the same by the Respondent as well as submissions by the Applicants. There are only two issues which emerge for determination. The first is whether this court should stay the proceedings of the lower court. The second is whether the court should grant stay of execution pending appeal.
 11. On the first issue, it is important to point out that a judgment in the lower was delivered on 7th September, 2022. The Judgment having been delivered on 7th September, 2022, there were no further proceedings expected save for execution proceedings. In the instant case, the Applicants appear to have been referring to the contempt proceedings which were filed. There were execution proceedings which could only be stayed on an application for stay of execution and not stay of proceedings.
 12. In any case, the application for contempt may have been disposed of and if by any chance, the court were to give any orders staying proceedings, it will be doing so in vain. This is because the application



for contempt of court was filed in November, 2022. If the submissions by the Applicants are anything to go by, a ruling on the application was set for 29th September, 2023 when it was deferred on grounds that one party had not filed submissions. The ruling may as well have been delivered by now and it will be superfluous to dwell on the issue of stay of proceedings.

13. On the second issue, there is absolutely no ground upon which the court can grant stay of execution. To begin with, the impugned judgment was delivered on 7th September, 2022. The application for stay of execution was made on 28th September, 2022 almost five months later. The delay which is inordinate is not explained.
14. There was no copy of the impugned judgment annexed to the application for the court to appreciate whether there were orders given which were capable of stay. In any case, the Applicants have not demonstrated what substantial loss they will suffer if stay of execution is not granted. I therefore find that this application is devoid of merit. The same is dismissed with costs to the Respondent.

It is so ordered.

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HON. E. O. OBAGA

JUDGE

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS THIS 3RD DAY OF JULY, 2025.

In the absence of parties

Court assistant - Steve Musyoki

