



**Muriithi & another v Maruhi (Environment and Land Appeal
E010 of 2024) [2025] KEELC 5016 (KLR) (4 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5016 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E010 OF 2024**

JO OLOLA, J

JULY 4, 2025

BETWEEN

CHARLES MAINA MURIITHI 1ST APPELLANT

MARGARET NJERI NJOROGE 2ND APPELLANT

AND

EUNICE WACHERA MARUHI RESPONDENT

RULING

1. By the Notice of Motion dated 19th June, 2024, Charles Maina Muriithi and Margaret Njeri Njoroqe (the Appellants) pray for orders that:
 - a. Spent;
 - b. The Honourable Court be pleased to stay execution of the Ruling and orders issued in Nyeri BRPT Case E033 of 2023 by the Hon. Patricia May on 26th January, 2024 pending hearing and determination of this appeal;
 - c. The Honourable Court be pleased to issue status-quo orders in regards to the premises marked Brifan Enterprises located on Nyeri Municipality Block 3/99 pending the hearing and determination of this appeal;
 - d. The Honourable Court be pleased to stay the proceedings in Nyeri CM Misc. Application No. E015 of 2024 seeking for adoption of the orders and Ruling issued on 21st July, 2023 and 26th January, 2024 by Hon Patricia May in Nyeri BRPT Case E033 of 2023 as a decree of the Court pending the hearing and determination of this appeal;
 - e. This Honourable Court be pleased to issue any order and /or directions it deems fit to grant in the circumstances; and



- f. The costs of this application abide in the appeal.
2. The Application is supported by an Affidavit Sworn on 19th June, 2024 and a Supplementary one sworn on 30th July, 2024 by the 1st Appellant and is premised on the grounds that:
- i. The Honourable Tribunal delivered a Ruling on 26th January, 2024 dismissing the application dated 27th July, 2023 on the basis that there was no proper service even though the Tribunal had discretion to set aside both regular and interlocutory judgments in the interest of justice;
 - ii. The Respondent in execution of the same has instituted Nyeri CM Misc. Application No. E015 of 2024 seeking for the adoption of the orders and Ruling issued on 21st July, 2023 and 26th January, 2024 by Hon. Patricia May in Nyeri BRPT Case E033 of 2023 as a decree of the Court and which case is coming up for hearing on 15th August, 2024 despite the present appeal;
 - iii. The Appellants shall suffer irreparable loss and prejudice should the execution proceed; and
 - iv. The Appellants Appeal raises triable issues with high chances of success and that failure to stay the execution proceedings therein, shall render this appeal nugatory.
3. Eunice Wachera Maruhi (the Respondent) is opposed to the application. In her Replying Affidavit sworn on 18th July, 2024, the Respondent avers that the application is malicious, vexatious, frivolous and an abuse of the court process as the application in Nyeri BPRT case No. E033 of 2023 was dismissed and a negative order cannot be stayed.
4. The Respondent avers that the Appellants cannot be issued with orders of status quo as they are no longer in occupation of the premises. The Respondent further avers that there is another suit being ELC. No. 257 of 2016 in which she is a party and which is pending before this Court. She further asserts that the instant application has been filed almost six (6) months after the Ruling by the BPRT.
5. I have carefully perused and considered both the application and the response thereto. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties.
6. By their application before the Court, the two Appellants urge the Court to be pleased to stay execution of the orders issued on 26th January, 2024 in Nyeri, BPRT Case No. E033 of 2023 pending the hearing and determination of the Appeal filed herein. The Appellants further urge the Court to issue status quo orders in respect of the premises known as Brifan Enterprises located on the parcel of land known as Nyeri Municipality Block 3/99.
7. Further and in addition to the foregoing, the Appellants pray for an order staying the proceedings in Nyeri CM. Misc. Application No. E015 of 2024 wherein the Respondent has sought the adaptation of the orders issued by the BPRT on 21st July, 2023 and 26th January 2024.
8. In matters of stay of execution Order 42 Rule 6 of the Civil Procedure Rules provides as follows:

“6.

- (1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from,



the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.

- (2) No order for stay of execution shall be made under sub-rule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

9. It follows therefore that a party seeking for an order of stay of execution has to demonstrate before the court that:

1. Substantial loss may result to him/her unless the order is made;
2. That the application has been made without unreasonable delay; and
3. The applicant has given such security as the court may order for the due performance of such decree or order as may ultimately be binding on him/her.

10. In the matter before me, the Appellants had by a Notice of Motion dated 27th July, 2023 sought for an order of injunction barring the Respondents from interfering with their quiet possession of the demised premises. Having heard the application and in the impugned Ruling delivered on 26th January, 2024, the Honourable Member of the Tribunal Patricia May dismissed the application concluding as below:

“Having made the above findings, it is therefore clear that it would be a mere academic exercise to assess the merits of the other prayers sought. The application dated 27th July, 2023 is dismissed with costs assessed at Kshs 50,000/= awarded to the Respondent.”

11. It was evident that exactly 30 days after the issuance of the orders, the Appellant moved to this court and lodged the Memorandum of Appeal dated 22nd February, 2024. The Appellant did not however institute any application for stay until some six (6) months later. No explanation has been offered whatsoever either in the Supporting Affidavit or the Supplementary Affidavit of the 1st Appellant as to why it took them 6 months to file the application and I was not persuaded that the application had been filed without inordinate delay.

12. Even if one were to assume that the application had been filed within reasonable time, it was clear to me that there was no grounds upon which the court could grant an order of stay of execution. The orders of 26th January, 2024 as seen above had merely declined to grant the Appellant’s application. Those orders were in the nature of a negative order and were thus incapable of stay, save perhaps on the issue of costs.



13. I was similarly not persuaded that there was any basis to grant an order of status quo as sought by the Appellants. From a perusal of the record, the BPRT had on 21st July, 2023 issued orders as follows:

“2. The Landlord/Applicant is granted leave to obtain vacant possession and in default, the applicant be granted leave to enforce forceful eviction...”

14. At paragraph 7 of the Supplementary Affidavit sworn by the 1st Appellant, he concedes that the eviction has already taken place and that they are no longer tenants in the demised premises.

15. In the premises, I was not persuaded that there was any merit in the Motion dated June 19, 2024 and I hereby dismiss the same.

16. The costs of the application shall abide the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 4TH DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Mr. Mbau Advocate for the Appellant
- c. Mr. Karanja Maina Advocate for the Respondent

