



REPUBLIC OF KENYA



Marua Farmers Co-operative Society v Kimangu & another (Environment and Land Appeal 15 of 2023) [2025] KEELC 6076 (KLR) (19 September 2025) (Ruling)

Neutral citation: [2025] KEELC 6076 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 15 OF 2023
JO OLOLA, J
SEPTEMBER 19, 2025**

BETWEEN

MARUA FARMERS CO-OPERATIVE SOCIETY APPELLANT

AND

JACKSON KIMANGU 1ST RESPONDENT

MARY WANGARI WAMWANGI 2ND RESPONDENT

RULING

1. By the Notice of Motion dated 9th November, 2023, Marua Farmers Co-operative Society (the Appellant) prays for an order of stay of execution of the order and decree issued in Nyeri CMCELC No. E020 of 2022 on 1st November, 2023 pending the hearing and determination of the Appeal.
2. The application is supported by an Affidavit sworn by the Appellant's secretary Joel Kariuki Ndebu and is premised on the grounds:
 - i. That on 12th October, 2023, the Lower Court ordered the Appellant to vacate land parcel No. Ruguru/Gachika/88 within 60 days failure to which they be evicted from the Suitland;
 - ii. That the Appellant is the registered proprietor of the said parcel of land and has been in occupation of the same for 23 years and put up a coffee buying centre which serves a big number of farmers;
 - iii. That unless orders for stay of execution are granted pending the Appeal, the same will be rendered nugatory and the livelihood of many farmers who rely on the Centre shall be affected; and
 - iv. That the pending Appeal has high chances of success and the Respondents will not suffer any prejudice if the orders of stay are granted.



3. Jackson Kimangu and Mary Wangari Wamwangi (the 1st and 2nd Respondents) are opposed to the application. In a Replying Affidavit sworn on their behalf by the 1st Respondent, the two assert that they are the ones in occupation of the suit property and that the Appellant only utilizes a small portion measuring about 1 acre as a coffee buying centre.
4. The Respondents aver that the effect of the judgment rendered by the Lower Court was that the exchange agreement between the two parties had been frustrated by squatters who reside on the Appellant's land parcel No. Ruguru/Gachika/1056 and the ownership therefore reverted back to where it was before the exchange. It is further the Respondents' case that the Appellant has another coffee factory in Ndurutu area some two Kilometers away from the suit property and it is therefore not true that they will be adversely affected by the execution of the judgment.
5. I have carefully perused and considered both the application as well as the response thereto. I have similarly perused and considered the submissions placed before the court by the Learned Advocates representing the parties herein.
6. By its application before the court, the Appellant prays for an order of stay of execution of the decree issued on 1st November 2023 in Nyeri CMELC Case No. E020 of 2022 pending the hearing and determination of this Appeal. The Respondents have through a Replying Affidavit sworn by the 1st Respondent opposed the application for stay of execution.
7. As it were, stay of execution is provided for under Order 42 Rule 6 of the Civil Procedure Rules, 2010 as follows:
 - “(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 subrule (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.”
8. As the Court of Appeal stated in *Butt –vs- Rent Restriction Tribunal (1979)* eKLR:
 - “a) The Power of the court to grant or refuse an application for stay of execution is discretionary; and the discretion should be exercised in such a way as not to prevent an appeal.



- b) Secondly, the general principle in granting or refusing a stay is, if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should the appeal court reverse the judge's discretion.
 - c) Thirdly, a judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 - d) Finally, the court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances and its unique requirements. The court in exercising its powers under Order XLI Rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to put security of costs as ordered will cause the order for stay of execution to lapse.”
9. In the matter before me, it was not in dispute that the Appellant is currently the registered proprietor of the parcel of land known as Ruguru/Gachika/88 (the suit property) while the 1st Respondent and other members of his family are registered as the owners of a parcel of land known as Ruguru/Gachika/1056. It was also not in dispute that their respective registration as such arose after the two sides to the dispute exchanged their parcels of land. At the time of the exchange, the Respondents' family owned and occupied LR. No. Ruguru/Gachika/88 while the Appellant had been allocated LR. No. Ruguru/Gachika/1056 by the then County Council of Nyeri.
10. It would appear that even after the parties entered into the agreement to exchange the two parcels of land, the Respondents were unable to move to LR. No. Ruguru/Gachika/1056 on account that the same had been occupied by squatters and the Appellant was unable to grant vacant possession.
11. That was the reason by their Complaint dated 11th March, 2022, the Appellant filed the suit before the Lower Court seeking an order of specific performance of the subject agreement and deed by delivery up of possession of the suit land to themselves. In addition, the Appellant sought an order for the Respondents to vacate the land failure to which they ought to have been forcefully evicted therefrom. The Respondents filed a statement of Defence and Counterclaim wherein they sought for a declaration inter alia that the Appellants were in breach of the exchange agreement and urged the court to order the Appellants to deliver vacant possession of the parcel that formerly belonged to the Appellant.
12. In those circumstances, it was evident to me that it is the Respondents who were in actual possession and occupation of the suit property. The trial court having dismissed the Appellant's case and allowed the Respondent's Counterclaim had not changed the position of the parties and there was absolutely nothing to stay as the parties had retained their positions.
13. However, as the court had ordered that the Appellant do grant vacant possession of the 1 acre portion of land where the Appellant runs a coffee factory I hereby order that the status quo obtaining as of the date of the judgment be maintained in regard to the factory pending the hearing and determination of the Appeal.
14. Otherwise, I did not find any merit in the application for stay of execution and hereby dismiss the same.
15. The costs of the application shall abide the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 19TH DAY OF SEPTEMBER, 2025



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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Wambui Mwai Advocate for the Appellant/Applicants
- c. Ms. Njogu Advocate for the Respondents

