



**Ngururi v Kamau & 2 others (Environment and Land Appeal  
E017 of 2023) [2024] KEELC 539 (KLR) (8 February 2024) (Ruling)**

Neutral citation: [2024] KEELC 539 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND APPEAL E017 OF 2023  
EK WABWOTO, J  
FEBRUARY 8, 2024**

**BETWEEN**

**DANIEL KIMANI NGURURI ..... APPELLANT**

**AND**

**FREDRICK NG'ANGA KAMAU ..... 1<sup>ST</sup> RESPONDENT**

**DUNCAN MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**WILLIAM MULANDI ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal against the ruling of the Chief Magistrate Court at Milimani delivered on 14th August 2023 by Hon. B.M. Cheloti Principal Magistrate in MC.ELC No. E1222 of 2023)*

**RULING**

1. This ruling is in respect to the Notice of Motion application dated 31<sup>st</sup> August 2023 supported vide a supporting affidavit sworn by Daniel Kimani Ngururiz. The Appellant sought to stay the proceedings in Milimani MC.ELC No E1222 of 2023, set aside the ruling delivered on 14<sup>th</sup> August 2023 and maintain status quo in with regard to parcel no. Nairobi/Block 105/6633.
2. The Applicant relied on seven main grounds:
  - i. That even when both the Appellant and 1<sup>st</sup> Respondent were claiming ownership the trial Court ought to have made a determination based on the root of title.
  - ii. With both the Appellant and 1<sup>st</sup> Respondent were claiming ownership it would be best to issue an order of status quo preserving the suit property.
  - iii. Unlike the Appellant who annexed photos and evidence showing he had been in occupation of the suit premises, the 1<sup>st</sup> respondent did not



- iv. That the intended appeal has high chances of success.
3. The Applicant filed submissions dated 14<sup>th</sup> November 2023 in which three issues for determination were raised;
  - i. Whether an order for stay should be granted pending the outcome of the appeal?
  - ii. Whether an order of status quo should be granted pending the outcome of the appeal?
  - iii. Whether on a balance of convenience, there is a threat of infringement and rights with regards to the suit property?
4. The application was opposed by the 1<sup>st</sup> Respondent who filed a relying Affidavit dated 11<sup>th</sup> October 2023 in which it was deposed that he was in occupation of the land and currently developing it. It was also deposed that the Appeal is premature since it did not raise prima facie issues and that the matter before the lower court was yet to proceed to full hearing.
5. Having considered the application and the submissions of the parties, it is evident that the issue for determination before this Court is whether the application dated 31<sup>st</sup> August 2023 is merited.
6. The Applicant has sought for inter alia a stay of proceedings in Milimani MC.ELC No. E1222 of 2023. It is worth noting that stay of proceedings is such a grave order, which ought to be issued sparingly and with necessary circumspection, given its implications on the Right to fair hearing as envisaged under Article 50(1) of the Constitution, 2010, as read together with Article 159(2) (b) of the Constitution 2010.
7. in the case of Kenya Wildlife Service v James Mutembei [2019] eKLR, where the court stated and held thus;

“Stay of proceeding should not be confused with stay of execution pending appeal. Stay of proceedings is a grave judicial action which seriously interferes with the right of a litigant to conduct his litigation. It impinges on right of access to justice, right to be heard without delay and overall, right to fair trial. Therefore the test for stay of proceeding is high and stringent.
8. Notwithstanding the caution that an order of stay of proceedings, ought to be granted sparingly and with due circumspection, it is worthy to underscore that the court is still seized of the requisite discretion to decree and grant an order of stay of proceedings, where the circumstances necessitate. Furthermore, it is also important to underscore that prior to and before granting an order of stay of proceedings, the Honourable court is called upon to undertake a delicate balance between the competing interests of the Parties.
9. The learned magistrate in her ruling dated 14<sup>th</sup> August 2023 referred to two applications, the 1<sup>st</sup> application dated 20<sup>th</sup> March 2023 filed by the Plaintiff and the 2<sup>nd</sup> application dated 29<sup>th</sup> March 2023 filed by the 1<sup>st</sup> Defendant. From the perusal of the said ruling, it is evident that the learned magistrate failed to consider the applicants application and no reasons were offered for the same. This is a manifest misdirection by the trial court which if allowed to stand, it can lead to grave injustice.
10. Consequently, and in respect of the instant matter, the interests of justice would be better served by granting an order of stay and thus averting the continuation of the proceedings before the magistrate’s court. To my mind, the question of possession goes beyond merely proving entry into the premise. It also encompasses the control of the use of the premise. The Applicant presented compelling evidence in form of documents and letters to prove that he had sufficient control of the premises up until the



filing of the suit. I therefore come to the conclusion that the Applicant herein has duly established and demonstrated a lawful basis, to warrant the exercise of discretion by granting the orders of stay of proceedings and or further proceedings, pending the hearing and determination of the instant Appeal.

11. In conclusion, it is the finding of this court that the Applicant has provided sufficient reasons warranting the grant of the orders sought in the application and in the foregoing this Court hereby issues the following orders;
- i. An order is hereby issued staying the proceedings and any further action in Milimani MC. ELC No. E1222 of 2023 pending the hearing and determination of this appeal.
  - ii. There shall be no eviction of either party from the suit property pending the hearing and determination of this appeal.
  - iii. the Applicant herein is ordered and directed to procure the typed proceedings and thereafter to file and serve the Record of Appeal within 30 days from the date hereof.
  - iv. Thereafter the Appeal shall be subject to directions in accordance with the provisions of Order 42 Rule 13 of the *Civil Procedure Rules* 2010.
  - v. Costs of the application will abide final determination of the appeal.

12. It is so ordered

**DATED, SIGNED AND DELIVERED VIRTUALLY AT NAIROBI THIS 8<sup>TH</sup> DAY OF FEBRUARY 2024.**

**E. K. WABWOTO**

**JUDGE**

In the presence of

Mr. Amati for the Applicant.

Ms. Shikali for the 1<sup>st</sup> Respondent.

N/A for the for the 2<sup>nd</sup> and 3<sup>rd</sup> Respondent.

Court Assistant; Caroline Nafuna.

