



**Mainye v Nyagaka (Environment and Land Appeal E021 of 2023)  
[2024] KEELC 3567 (KLR) (9 April 2024) (Ruling)**

Neutral citation: [2024] KEELC 3567 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KISII  
ENVIRONMENT AND LAND APPEAL E021 OF 2023**

**M SILA, J**

**APRIL 9, 2024**

**BETWEEN**

**MARY KERUBO MAINYE ..... APPELLANT**

**AND**

**PAULINE KWAMBOKA NYAGAKA ..... RESPONDENT**

**RULING**

(Application for stay of execution of judgment pending appeal; application allowed)

1. The application before me is that dated 21 December 2023 filed by the appellant. He seeks an order of stay of execution of the judgment delivered by the Magistrates’ Court Kisii, in the case Kisii CMCCELC No.126 of 2020, pending hearing and determination of this appeal.
2. From what I can see, the respondent was the plaintiff before the suit in the subordinate court with the applicant as defendant. The matter proceeded for hearing ex parte on 8 August 2023 and judgment was reserved for delivery on 29 August 2023. Before the judgment was delivered, the applicant filed an application dated 14 August 2023 seeking to set aside the ex parte proceedings. However, by the time the application was heard, the judgment that was scheduled for 29 August 2023 was already delivered. In her ruling on the application dated 14 August 2023, the trial Magistrate held that since judgment had already been delivered, there was nothing left in it and proceeded to dismiss the application. Aggrieved, the applicant filed this appeal to contest the dismissal of her application and now seeks stay of execution of the judgment pending hearing of the appeal.
3. On 27 February 2024 when the application came before me, Mr. Ayora, learned counsel for the respondent, stated that he had filed a reply. I couldn’t see any in the file and I directed counsel to present a copy for the court file. I have seen none. Nevertheless I have seen the submissions of Mr. Ayora where he has inter alia argued that the application sought orders that were overtaken and that it is moot.



He also submitted that the judgment is not subject to an appeal. I think these are issues that can be canvassed in the main appeal herein.

4. I am persuaded that if I do not grant an order of stay of execution pending appeal, the judgment may be executed, and the appeal may be rendered nugatory. This is in light of the fact that the respondent had sued the appellant for trespass over the land parcel West Kitutu/Bomatara/1413 and if the judgment is executed the applicant stands to be evicted which may render the appeal nugatory.
5. I will therefore allow the application dated 4 December 2023. I order that execution of the judgment delivered on 29 August 2024 be stayed pending hearing and determination of this appeal. I further direct that the status quo regarding possession and title of the disputed land be maintained pending hearing and determination of the appeal.
6. The costs of the application will be costs in the appeal.
7. Orders accordingly.

**DATED AND DELIVERED THIS 9 DAY OF APRIL 2024**

**JUSTICE MUNYAO SILA**

**JUDGE, ENVIRONMENT AND LAND COURT**

**AT KISII**

Delivered in the presence of :

Mr. GJM Masese for the applicant – Absent

Mr. Ayora for the respondent – Absent

Court Assistant – Aphline Owiwa

