



**Mugwe v Muhami & another (Environment and Land Appeal
8 of 2023) [2024] KEELC 5047 (KLR) (3 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5047 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL 8 OF 2023**

JO OLOLA, J

JULY 3, 2024

BETWEEN

ROSALINE WAMBUI MUGWE APPELLANT

AND

AARON MWANGI MUHAMI 1ST RESPONDENT

ELIZABETH WANGUI NGINJIRI 2ND RESPONDENT

RULING

1. By the Notice of Motion dated 18th September 2023, Rosaline Wambui Mugwe (the Appellant) urges this court to grant an order of stay of execution in Nyeri CM ELC No. E037 of 2021 pending the hearing and determination of this Appeal.
2. The application which is supported by an Affidavit sworn by the Appellant is premised on the grounds inter alia:-
 - i). That the Appellant's application seeking stay of warrants of attachment of sale was dismissed in the Ruling delivered on 17th August 2023;
 - ii). That unless the stay is granted the Appellant stands to suffer substantial loss as the parcel of land known as Mweiga/Thungare/Block 1/Kamiru/54 shall be sold; and
 - iii). That the Appeal has a reasonable chance of success and if the execution proceeds, it shall be rendered nugatory.
3. Aaron Mwangi Muhami (the 1st Respondent) is opposed to the application. By a Notice of Preliminary Objection dated 23rd October 2023, the 1st Respondent asserts as follows:-



1. That both the Appeal and the application dated 18/09/2023 contravene the mandatory provisions of Order 43 of the Civil Procedure Rules therefore the same is a non-starter, incurably bad in law and an abuse of the court process; and
2. That the application dated 18/09/2023 is scandalous, frivolous or vexatious.
4. In addition, the 1st Respondent has sworn a Replying Affidavit filed herein on 6th November 2023 in which he repeats the assertion that both the Appeal and the application contravene the mandatory provisions of Order 43 of the Civil Procedure Rules. It is further the 1st Respondent's case that the application has been overtaken by events as the suit property was auctioned on 15th September 2023 before the application was filed.
5. The 1st Respondent avers further that the application is an afterthought only brought for the purposes of delaying the execution of the matter as the Appellant has never registered any encumbrance on the suit land to warn innocent purchasers for value from buying the land.
6. I have carefully perused and considered both the Appellant's Motion as well as the response thereto by the 1st Respondent.
7. By the Motion filed herein by the Appellant, she has sought an order of stay of execution in Nyeri CMELC No. E037 of 2021 pending the hearing and determination of this Appeal.
8. From a perusal of the Supporting Affidavit sworn by the Appellant on 18th September 2023, it is apparent that the Appellant had in the said suit filed objection proceedings wherein she sought for the stay of execution of the warrants of attachment and sale that had been issued therein in regard to the parcel of land known as LR No. Mweiga/Thungare/Block 1/Kamiru/54. That application was dismissed in a Ruling delivered by the trial court on 17th August 2023.
9. It was evident from a perusal of the 1st Respondent's Replying Affidavit sworn and filed herein on 6th November 2023 that subsequent to the said Ruling, the suit property was advertised for sale in the Standard Newspaper of 30th August 2023. A perusal of the advertisement annexed to the Affidavit (annexture "AMM-2") reveals that the sale was slated for 15th September 2023.
10. From a perusal of the Certificate of Sale annexed to the said Replying Affidavit (annexture "AMM-1") it was evident that the sale proceeded as scheduled and that one Martin Kiriga Kiriko was declared the purchaser having put in a bid of Kshs. 11,500,000/= at the auction.
11. That being the case, it was clear to me that indeed this application having been filed some three (3) days after the auction, had been overtaken by events and that this court was being called upon to act in vain.
12. In the premises, I did not find any basis for the Motion dated 18th September 2023. The same is hereby dismissed with costs to the 1st Respondent.

DATED, SIGNED AND DELIVERED AT NYERI THIS WEDNESDAY 3RD DAY OF JULY, 2024.

In the presence of:

Mr. Kiminda for the Appellant.

No appearance for the Respondent

Court Assistant: Michael

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J. O. OLOLA



JUDGE

