



**Mukwanyaga v Kathendu & another (Environment & Land Case  
E011 of 2023) [2024] KEELC 6774 (KLR) (9 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 6774 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT & LAND CASE E011 OF 2023**

**CK NZILI, J**

**OCTOBER 9, 2024**

**BETWEEN**

**HILDA MUKWANYAGA ..... PLAINTIFF**

**AND**

**FESTUS KATHENDU ..... 1<sup>ST</sup> DEFENDANT**

**LAND REGISTRAR – MERU CENTRAL ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. What the court is asked to grant by an application dated 24.7.2024 brought under Order 42 Rule 6 [Civil Procedure Rules](#) is a stay of execution of the decree and other proceedings.
2. The reasons are contained on the face of the application and in the supporting affidavit of Hilda Mukwanyaga sworn on 24.7.2024. The applicant avers that the 1<sup>st</sup> respondent and decree-holder, contrary to Order 22 [Civil Procedure Rules](#), purported to execute the decree on the subject land that hosts a school that the applicant has let out to a third party, and if the decree is executed, she stands to suffer a substantial loss.
3. The applicant avers that she has requested for proceedings ruling and judgment as per annexure marked HM1, 2, 3 & 4. Similarly, the applicant avers that there is a threat to demolish the properties on the suit land that houses school children.
4. The application is opposed by a replying affidavit sworn by Festus Kathendu on 4.9.2024. It is averred that the issue of non-participation of the applicant in the hearing of this suit has conclusively been dealt with by this court and cannot be raised in this application.
5. The 1<sup>st</sup> respondent avers that the application is incompetent and bad in law, for after the judgment was delivered, no competent or proper notice of appeal was filed within 14 days of the delivery of the judgment. The respondent avers that it took the applicant 43 days to file this unreasonable application.



6. Further the 1<sup>st</sup> respondent avers that no substantial loss has been demonstrated, more so when, after the delivery of the judgment, the alleged tenant approached him, and they negotiated the terms of how he will continue occupying his land and entered into a lease agreement dated 31.7.2024, as such the applicant should not continue benefitting from rent over his property. He attached the lease agreement with Highland Academy (Timau) Ltd as annexure FK "1"; otherwise, the provision of security was a condition precedent.
7. The 1<sup>st</sup> respondent relied on written submissions that; loss has not been demonstrated by way of any ownership document to the suit land to allow the applicant to trespass to the land contrary to Sections 24, 25 & 26 of the [Land Registration Act](#).
8. The 1<sup>st</sup> respondent submitted that after the judgment, he took complete control of his land and the tenant who was running the school recognized and accepted him as the owner of the suit land vide the attached formal lease. Reliance was placed on [Ndolo v Asiyo & another](#) (2023) KEELC 16754 (KLR) (29<sup>th</sup> March 2023) (Ruling).
9. Similarly, the 1<sup>st</sup> respondent submitted that there has been an inordinate delay in making the application and no security for the due performance of the decree has been offered; otherwise, to grant the orders sought would amount to the applicant continuing to perpetuate a trespass into his land.
10. The parameters to consider in granting a stay by this court include; the establishment of sufficient cause, the satisfaction of substantial loss, and the furnishing of security. The purpose of a stay is to preserve the subject matter in dispute while balancing the interests of the parties and considering the circumstances of the case. In [RWW v EKW](#) (2019) eKLR, the court said that in exercising discretion, the court must weigh the applicant's undoubted right of appeal against that of a successful litigant who is equally entitled to enjoy the fruits of his judgment, so that no party suffered prejudice that cannot be compensated by way of costs.
11. In [James Wangalwa & another v Agnes Naliaka Cheseto](#) (2012) eKLR, the court observed that substantial loss is the cornerstone of stay and is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory. In [Arun C. Sharma v Ashana Raikundalia t/a Raikundalia & Co. Advocates](#) (2014) eKLR, the court observed that security is needed to guarantee the due performance of the decree because, in the civil process, judgment was like a debt.
12. Therefore, an applicant, as held in [Gianfranco Manenthi & another Africa Merchant Assurance Company Limited](#) (2019) eKLR must show and meet or provide security. As to delay, the law has not set the minimum or maximum delay since even a one-day delay could be inordinate depending on the circumstances of a case.
13. Applying the principles as expounded in the cited cases, the applicant has not explained the delay of 43 days which unfortunately made the 1<sup>st</sup> respondent take over possession of the suit land. As to substantial loss, the applicant says that there was a third party in the suit land who is running a school there with school-going children, likely to suffer and the risk of demolishing the buildings being real. The 1<sup>st</sup> respondent has displayed a lease agreement dated 31.7.2024 on a month-to-month basis. The applicant has not denied that the 1<sup>st</sup> respondent has taken over the suit premises and entered into a lease agreement that negates the assertion of substantial loss, impeding eviction, and or demolition of the suit premises as alleged by the applicant.
14. Therefore, I find no substantial loss demonstrated with cogent and tangible evidence that will negate the very essential core of the substratum of the appeal. See [Wangalwa v Cheseto](#) (*supra*).



15. As to security, the applicant has not offered any, including the costs of the suit. Similarly, there are no exceptional circumstances to warrant any stay, more so when there is no evidence of a notice of appeal in existence against the decree of this court. The applicant did not attend court to argue her application on 17.9.2024 to clarify this position. The application is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 9<sup>TH</sup> DAY OF OCTOBER, 2024**

In presence of

C.A Kananu

Kaburu for the 1<sup>st</sup> respondent

**HON. C K NZILI**

**JUDGE**

