



Muriithi & 2 others (Suing on Their Own Behalf and on Behalf of Oljabet Jua Kali Artisan Community Based Organisation (CBO) as the Chairman, Secretary & Treasurer) v Gitonga & 2 others (Sued on Their Own Behalf and on Behalf of Marmanet Jua Kali Society as the Chairman, Secretary & Treasurer) (Environment and Land Appeal E010 of 2024) [2024] KEELC 6426 (KLR) (2 October 2024) (Ruling)

Neutral citation: [2024] KEELC 6426 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND APPEAL E010 OF 2024**

**AK BOR, J
OCTOBER 2, 2024**

BETWEEN

**CYRUS MURIITHI 1ST APPELLANT
WILSON M. GAKURU 2ND APPELLANT
JUDY KATHURE 3RD APPELLANT
SUING ON THEIR OWN BEHALF AND ON BEHALF OF OLJABET JUA
KALI ARTISAN COMMUNITY BASED ORGANISATION (CBO) AS THE
CHAIRMAN, SECRETARY & TREASURER**

AND

**DAVID WAIKWA GITONGA 1ST RESPONDENT
STEPHEN MAINA WAIRIMU 2ND RESPONDENT
DENNIS MUCHIRI NJOROGE 3RD RESPONDENT
SUED ON THEIR OWN BEHALF AND ON BEHALF OF MARMANET JUA
KALI SOCIETY AS THE CHAIRMAN, SECRETARY & TREASURER**

RULING

1. The Appellant brought the application dated 05/07/2024 seeking stay of execution of the ruling and order issued on 06/06/2024 in Nyahururu CM ELC Case No. E037 of 2023 pending hearing and determination of the appeal. The application was made on the grounds that the Learned Magistrate restrained the Appellants from operating within the suit premises and that upon issuance of that order,



the Respondents disconnected electricity from the businesses of the Appellant's members which in effect paralyzed the business of 30 Jua Kali Artisans.

2. The application was supported by the affidavit of Wilyson Gakuruh who deponed that he was the Secretary of the Appellant and was authorized to swear the affidavit. He averred that the Respondents instituted the suit before the Magistrate's court and applied for an injunction. Vide the ruling delivered on 06/06/2024, the Learned Magistrate ordered the Appellants to vacate the suit property. He exhibited a copy of the order which is not legible. He stated that over and above being ordered to vacate the suit premises, the Respondents had disconnected their members' access to electricity and blocked the pathway to the meter boxes so that they could not reconnect power. He emphasised that since a vast majority of their members used electricity in their various endeavours, lack of electricity had paralyzed their businesses.
3. He averred that the trial of the case was unlikely to be concluded quickly and as such the Appellants would be adversely affected should this court not grant the orders of stay. He went on to argue that as Jua Kali Artisans, they were small enterprises who rely on daily income for survival. He stated that the suit property was public land set aside for Jua Kali Artisans within Marmanet Ward under the direction and authority of the Micro and Small Enterprises Authority. He was emphatic that the buildings within the suit property including those under construction were developed by the Government for use by all Jua Kali Artisans. He referred the court to the photographs to signage of the building in support of this contention. He urged the court to grant orders of status quo until the appeal was determined to prevent an injustice.
4. David Waikwa Gitonga swore the replying affidavit as the Chairman of the Respondent and averred that the Respondent which has 72 members, was registered on 30/01/1992 and that its members took possession of the suit premises in the early 90s. They erected permanent and temporary sheds for operating artisan businesses. The Respondents applied to have the suit property installed with electricity and got power connected to the premises to enable the members carry out their businesses efficiently. He produced a copy of the certificate of lease dated 19/06/2024 issued to the Society.
5. That in 2016, the Society requested the Governor of Laikipia to extend financial assistance to the Respondent to enable them construct more permanent rooms. He exhibited copies of the letters while adding that a contractor was sent to the site by the Governor. Construction of the permanent buildings commenced in June 2022 as shown on the photographs he exhibited. They later came to learn that the Appellants who were not members of the Respondent registered a Community Based Organization (CBO) on 07/06/2022 and started staking claim on the Respondent's plot and the buildings constructed on the suit premises. He stated that the Appellants displaced some of the Respondent's members from the suit premises with the intention of allocating the premises to their members.
6. He averred that on 26/08/2023 one of the members of the Appellants broke into the meter box holding the electricity meters for the members of the Respondent's premises, locked it up with a different padlock thereby denying the members access to the meter box. Additionally, that the Respondents started changing the account numbers of existing meters and demolishing the semi-permanent structures belonging to the Respondent to pave way for their unlawful structures. That they even issued notices to the Respondent to vacate the premises which prompted the Respondent to file the suit before the Magistrate's court. He maintained that the Appellants were still using the electricity to the detriment of the Respondents' members. Further, that they were also using their premises to operate their businesses to the detriment of the Respondent's members who were the rightful beneficiaries of the structures.



7. He denied that the suit land was public land while adding that grant of orders for status quo would be detrimental to the Respondents' members who were being deprived of the means to earn a living by the Appellants' occupation of their business premises. He pointed out that the Appellants had not offered security.
8. The issue for determination is whether the court should grant stay of execution of the orders made by the learned Magistrate on 06/06/2024. The Appellants contend that the suit land is public land set aside for use by all Jua Kali Artisans and that their members are entitled to operate from that land. They argued that the Respondents have disconnected their members access to electricity and blocked the pathway to the meter boxes making it impossible for them to reconnect the power.
9. On their part, the Respondents contended that the Appellants registered their organization on 07/06/2022 and started laying claim to the Respondent's land and buildings. Further, that by occupying the buildings, they displaced the Respondent's members with the intention of allocating the premises to their own members. The Respondent annexed a copy of the certificate of registration dated 30/01/1992, its constitution and Rules, list of members of the Respondent and various correspondence exchanged in reference to the suit property. It also exhibited a certificate of lease issued to the Permanent Secretary to the Treasury of Kenya, as trustees of Marmanet Jua Kali Society. They attached other documents and letters exchanged with the County Government together with a certificate of registration of the Appellant as a CBO issued on 07/06/2022.
10. In order to grant stay in case of appeal, an applicant is required by Rule 6 of Orders 42 of the [Civil Procedure Rules](#) to satisfy the court that substantial loss may result to the applicant unless the order for stay was made and that the application was made without unreasonable delay. An applicant is also required to provide security as the court orders for the due performance of such order or decree as may ultimately be binding on him.
11. The Appellants did not annex a copy of the ruling which would have assisted the court in determining the application for stay of execution.
12. The application was brought on 05/07/2024 following the orders which the trial court issued on 6/6/2024. The Appellants have not satisfied the court that substantial loss may result to them unless the order for stay is made. They did not offer any security for the due performance of such order or decree as may ultimately be binding on them.
13. The court declines to grant the orders sought in the application dated 05/07/2024. The costs of the application will abide the outcome of the appeal.

DELIVERED VIRTUALLY AT NYAHURURU THIS 2ND DAY OF OCTOBER 2024.

K. BOR

JUDGE

In the presence of: -

Ms. Eunice Ndegwa for the Appellants

Mr. Gakenia Gichuru for the Respondents

Court Assistant-Vanessa Muiruri

