



**Murimi v David & 2 others (Environment and Land Appeal  
E066 of 2022) [2023] KEELC 16767 (KLR) (14 March 2023) (Ruling)**

Neutral citation: [2023] KEELC 16767 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E066 OF 2022**

**BM EBOSO, J**

**MARCH 14, 2023**

**BETWEEN**

**LILIES WANJIKU MURIMI ..... APPELLANT**

**AND**

**ELIZABETH WANGUI DAVID ..... 1<sup>ST</sup> RESPONDENT**

**MICHAEL KUNGU NGUGI ..... 2<sup>ND</sup> RESPONDENT**

**LAND REGISTRAR THIKA ..... 3<sup>RD</sup> RESPONDENT**

*(Being an Appeal arising from the Judgment of Hon C. A Otieno Omondi, Senior Principal Magistrate, delivered on 30/6/2022, in Ruiru SPM Misc Civil Suit No 19 of 2019)*

**RULING**

1. This appeal was initiated through a memorandum of Appeal dated July 21, 2022, filed in this court on July 20, 2022. It challenges the Judgment rendered on June 30, 2022 in Ruiru SPMC Misc Civil Suit No 19 of 2019 by Hon CA Otieno Omondi. The original record of the trial court is yet to be availed to this court. It is not clear why the Ruiru Senior Principal Magistrate Court designated the case as a miscellaneous suit.
2. Through the impugned Judgment, the trial court issued a permanent injunction restraining the appellant against entering or remaining upon land parcel number Ruiru/Mugutha Block 1/1467 (hereinafter referred to as 'the suit property') or from selling, offering for sale, charging, leasing or transferring or otherwise alienating or dealing with the suit property without the consent of the 1st respondent. In addition, the trial court granted the appellant 45 days within which to vacate the suit property. Aggrieved by the Judgment of the trial court, the appellant initiated this appeal.
3. Subsequent to filing the appeal, the appellant brought a notice of motion dated August 10, 2022, seeking an order staying execution of the Judgment of the trial court, pending the hearing and



determination of the appeal. The said application is one of the two motions that fall for determination in this ruling.

4. The second motion falling for determination is the 1st respondent's application dated August 30, 2022, through which the 1st respondent seeks an order compelling the appellant to provide security for the 1st respondent's costs in the sum of Kshs 500,000 or such other sum as the court may deem adequate. I will dispose the two applications simultaneously because they are, by and large, intertwined.
5. The appellant's application for stay of execution was supported by the appellant's affidavit sworn on August 10, 2022. It was canvassed through written submissions dated February 12, 2023, filed by M/s Wanjohi Gachie & Co Advocates. The case of the appellant is that the effect of the impugned Judgment is to evict her from the suit property. She adds that she is an innocent purchaser for value who has greatly invested on the suit land. She contends that she is unlikely to recover her investments in the event that she is evicted and subsequently her appeal succeeds. She contends that the appeal will be rendered nugatory if she is evicted. It is her case that she has an arguable appeal.
6. Canvassing the application, Mr Wanjohi Gachie, counsel for the appellant, submitted that the appellant would stand to suffer substantial loss if an order of stay of execution is not granted because she would be evicted from the suit property. Counsel added that the appellant had brought the application timeously. Lastly, counsel submitted that the applicant was ready and willing to provide 'security for costs'. Counsel urged the court to grant the order of stay.
7. The 1st respondent opposed the application for an order of stay of execution through an affidavit sworn on August 30, 2022 and written submissions dated November 10, 2022, filed by M/s Nguni Mbugua & co Advocates. The case of the 1st respondent is that she is the registered proprietor of the suit property, having acquired it from M/s Nyakinyua Investment Company Limited way back in 1987. She has never sold the suit property and neither has she authorized anyone to sell the suit property on her behalf. She contends that the appellant has not demonstrated evidence of substantial loss that she is likely to suffer in the event that the order of stay of execution is not granted. She adds that she would stand to suffer harm if an order of stay is granted. It is her case that this appeal is merely intended to vex her and delay the finalization of this dispute. Lastly, she contends that she would be in a position to satisfy any decree that this court may issue.
8. The 2nd respondent opposed the appellant's application for an order of stay of execution.
9. The 1st respondent's case in the application for security for costs is contained in her affidavit sworn on August 30, 2022 and her submissions dated November 10, 2022. Her case is that during trial the appellant was ordered to pay to her adjournment costs but the appellant refused/failed to pay the costs. She contends that given the above background, it is unlikely that the appellant will pay her costs in the event that her appeal fails. The respondent contends that given the past conduct of the appellant in relation to her obligation to pay costs, it is necessary that she be ordered to provide security for costs.
10. The appellant's case on the respondent's application for an order of security for costs is contained in her replying affidavit sworn on February 12, 2023 and written submissions dated February 12, 2023. Her case is that the reason why she did not pay costs awarded to the 1st respondent in the trial court is that there was an order of stay of execution. She contends that the proposal for security for costs at Kshs 500,000 is unwarranted. She adds that in the event that the court deems it appropriate to order her to provide security for costs, she will comply.
11. The appellant's counsel contended that the application for an order for security for costs should be rejected because it was brought under the wrong provision of the law.



12. I have considered the parallel applications, the responses to the applications, and the parties' respective submissions. I have also considered the relevant legal frameworks and jurisprudence on the key questions that fall for determination in the two applications. The key question falling for determination in the appellant's application dated August 10, 2022 is whether the criteria upon which an order for stay of execution is issued has been satisfied. The key question that falls for determination in the 1st respondent's (Elizabeth Wangui David) application dated August 30, 2022 is whether a case has been made out for an order of security for costs. I will dispose the two issues sequentially in the above order.
13. Exercise of jurisdiction to grant an order of stay of execution guided is by the principle contained in the framework in Order 42 Rule 6(2) of the *Civil Procedure Rules* which provides as follows:
  - (2) No order for stay of execution shall be made under subrule (1) unless—
    - (a) 'The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.'
14. Suffice it to state that, a party seeking an order of stay of execution pending the disposal of an appeal is required to satisfy the court that he would stand to suffer substantial loss unless a stay order is made; provide appropriate proposals on security for the due performance of the decree or order that may ultimately be binding on him; and bring the application timeously.
15. In the application under consideration, the appellant has been in occupation of the suit property pursuant to a sale that was adjudged to have been illegal on the ground that the person who purported to sell to her the suit property was an imposter who had no right to sale the land. She contends that she has developed the suit property. The Judgment appealed against is an order requiring the appellant to vacate the suit property. Enforcement of the Judgment would require eviction of the appellant. Given the above circumstances, the court is satisfied that indeed, eviction of the appellant while the appeal is pending disposal may occasion substantial loss to the appellant.
16. On security, the appellant submitted that in the event that the court orders her to deposit 'security for costs' she would be ready and willing to comply with the order of the court. Neither the appellant nor the respondent placed before the court evidence relating to reasonable rental value for an undeveloped property of similar size in the same locality. This would have assisted the court in assessing reasonable security for the due performance of the decree, taking into account the fact that the appellant was ordered by the trial court to vacate the suit property. In the absence of necessary evidence on the above aspect, the court will not pluck a figure from the air.
17. That leaves the aspect of security for costs as the only limb of security to be considered. While opposing the application for stay, the respondent submitted that in the event the court is inclined to grant an order for stay of execution, it should order the appellant to deposit in court security equivalent to Kshs 500,000. The respondent contended that the appellant had refused to comply with an interlocutory order of the trial court requiring her to pay costs. The appellant's answer to the above allegation was that the order requiring her to pay costs was stayed by the trial court. She did not, however, exhibit a copy of the stay order. Consequently, this court is satisfied that the respondent's fears have a basis. The court will, in the circumstances, order the appellant to provide security for costs in the sum of Kshs 250,000 within 45 days. This finding disposes the respondent's application dated August 30, 2023.



18. In the end, the appellant's notice of motion dated August 10, 2023 and the 1st respondent's notice of motion dated August 30, 2023 are disposed in the following terms:
- a. Subject to the appellant's compliance with the order made by this court on February 15, 2023, requiring the appellant to file and serve the record of appeal within 30 days; and subject to the appellant complying with the requirement on security for the due performance of the decrees, there shall be a stay of execution of the judgment of the trial court in Ruiru SPMC Misc Civil suit No 19 of 2019 for a period of six months from today.
  - b. The appellant shall deposit in this court a sum of Kshs 250,000 as security for the due performance of the decree of the trial court and the decree of this court.
  - c. Costs of the two applications shall be in the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 14<sup>TH</sup> DAY OF MARCH 2023**

**B M EBOSO**

**JUDGE**

Ms Mwangi for the Appellant

Court Assistant: Ms Osodo

