



M’Ikamati & another v Karinguri (Environment and Land Appeal E030 of 2021) [2023] KEELC 16031 (KLR) (1 March 2023) (Ruling)

Neutral citation: [2023] KEELC 16031 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E030 OF 2021**

CK NZILI, J

MARCH 1, 2023

BETWEEN

JOSHUA MWITI M’IKAMATI 1ST APPELLANT

CHARLES MBAJO M’IBUTU 2ND APPELLANT

AND

SEBASTIAN KARINGURI RESPONDENT

RULING

1. Before the court is the application dated November 7, 2022 in which the respondent to the appeal seeks for the maintenance of status quo or a stay of execution of the judgment herein pending the hearing and determination of an intended appeal. The application is based on the reasons on its face and an affidavit in support sworn by Sebastian Karinguri on the even date. In the said affidavit, the applicant deposes that he filed a notice of appeal against the judgment delivered on March 16, 2022, issues raised in the application dated August 18, 2022 and the application dated July 27, 2022 have been overtaken by events; execution is likely to occur; land being sensitive and emotive, a lot is at stake and lastly; it is in the interest of justice and fairness that the application be allowed.
2. The application is opposed by a replying affidavit of the 1st appellant/respondent Joshua Mwiti M’Ikamati sworn on January 11, 2023. The grounds of opposition are that the respondents as successful litigants are entitled to enjoy the fruits of litigation; the applicant tried to frustrate the execution of the decree by rushing to Tigania law courts by an application dated August 8, 2022 which was eventually dismissed on December 15, 2022; there has been an inordinate delay of nine months which has not been sufficiently explained; no irreparable harm has been demonstrated; status quo has been dismantled and lastly; that the application is made in bad faith.
3. A party seeking a stay of execution under order 42 rule 6 of the *Civil Procedure Rules* has to demonstrate substantial loss, file the application within a reasonable time, offer security for the due satisfaction of



the decree should the appeal not succeed and lastly, demonstrate that it is in the interest of justice that the application be allowed.

4. In the case of *Charles Kariuki Njuri vs Francis Kimaru Rwara* (2020) eKLR, the court underscored that the three conditions aforementioned must be met before a stay of execution is granted. The purpose of the stay is to preserve the substratum of the case so that the rights of the appellant who is exercising his undoubted right of appeal are safeguarded and the appeal if successful is not rendered nugatory. This was the position taken in *Consolidated Marine vs Nampijja & another* Nairobi Civil Appeal no 93 of 1989.
5. In the case of *James Wangalwa & another vs Agnes Naliaka Cheseto* (2012) eKLR, the court took the view that execution of a decree was a lawful process therefore it was not enough for a party to say that there was impeding execution but must show other vitiating factors which may change the status of the subject matter in a manner prejudicial to the applicant if he were to be a successful party in the intended appeal.
6. Applying the foregoing case law to the present facts, judgment in this matter was delivered in March 2022 while the present application was filed on November 11, 2022. The delay is close to nine months. No attempts have been made to give a reasonable explanation why the applicant had to wait for nine months to file this application. In the case of *Mohsen Ali vs Priscillah Boit & another* 2014 eKLR the court held a delay even of one day may be inordinate depending on the circumstances of the case.
7. Coming to the element of substantial loss, the applicant has not given any details or particulars of the nature of the occupation, the developments on the suit land and the likely loss, harm or damage to occur should the execution proceed. Other than saying that the execution is due, the applicants has not demonstrated how the substratum of the appeal was likely to change should the execution proceed. As to the issue of security, the applicant has not made any proposal including on account of costs.
8. Given the foregoing, the court is of the considered view that it would not be in the interest of justice to grant the orders sought. The upshot is the application stands dismissed with costs.

DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 1ST DAY OF MARCH, 2023

In presence of:

C/A: Kananu

Mr Nyenyire for appellant

Karanja for respondent

HON C K NZILI

ELC JUDGE

