



**Gisaga v Kiruja (Environment and Land Miscellaneous Application  
E011 of 2023) [2023] KEELC 17372 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17372 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND MISCELLANEOUS APPLICATION E011 OF 2023**

**CK NZILI, J**

**MAY 10, 2023**

**BETWEEN**

**ABDALLA MUTEMBEI GISAGA ..... APPELLANT**

**AND**

**PATRICIA KATHURE KIRUJA ..... RESPONDENT**

**RULING**

1. By an application dated April 4, 2023, the court is asked to stay the execution of the judgment delivered by the Business Premises Rent Tribunal on March 3, 2023, pending the hearing and determination of his pending appeal.
2. The grounds upon which the application is based are contained on its face and in a supporting affidavit sworn by Abdalla Mutembei Gisaga on April 4, 2023. The applicant averred that he had filed an appeal which has a high chance of succeeding and that if a stay order is not granted, he stands to suffer irreparable loss and damage, and that it was in the interest of justice and fairness for the court to allow him to seek another opinion regarding the issues raised in the appeal.
3. The application is opposed by a replying affidavit of Patricia Kathure Kirunja sworn on April 25, 2023, on the basis that it does not meet the conditions provided under Order 42 Rule 6 of the *Civil Procedure Rules*. The respondent relied on written submissions dated May 3, 2023 based on the case law of *Antoine Ndiaye v African Virtual University* [2015] Eklr, *Nicholas Stephen Okaka & Another v Alfred Waga wesonga* [2022] eKLR and *James Wangalwa v Agnes Naliaka Cheseto* [2012] eKLR. She urged the court to find no irreparable harm disclosed, no loss is to be suffered and no security is offered or any willingness to pay any amount towards the satisfaction of the decree. Lastly, the respondent urged the court to find that all these moves speak to the applicant's intention to delay her from enjoying the fruits of her judgment.



4. For a party to be entitled to a stay of execution, he has to apply without delay, must demonstrate substantial loss, offer security for the due realization of the decree should the appeal not succeed, and lastly demonstrate that it is in the interest of justice to grant the orders sought in line with Sections 1A & 1B of the *Civil Procedure Act* and Article 159 of the *Constitution* of Kenya.
5. In the case of *James Wangalwa v Agnes Cheseto (supra)*, the court held that the initiation of an execution process was a legal process which by itself, did not amount to substantial loss. Therefore, the court said that a party must show other vitiating factors whose cumulative effect would be to interfere with the very essential core of the appeal.
6. Further, in *Butt v Rent Restriction Tribunal* [1979] eKLR, the court said that an applicant must offer sufficient security for the due satisfaction of the decree should the appeal fail. Whereas there is no precise law on what amounts to unreasonable delay, it all depends on the circumstances of each case, since even a one-day delay could be inordinate. *Safaricom Limited vs Jasenga Company Limited & 4 others* [2021] eKLR.
7. In this application, the judgment appealed against was delivered on March 3, 2023. Though this application was filed on April 4, 2023, no explanation has been offered why the applicant did not move with speed to apply for a stay. The applicant has not demonstrated the status of the subject matter to this appeal. No evidence has been availed as to what loss or damage the applicant was likely to occur to him if the application was not allowed. It is not for the court to assume any loss or damage and how such an alleged irreparable loss was likely to affect the substratum of the appeal. No security has also been offered by the applicant. The court has had to peruse the appeal file. The same was filed late with no leave sought to lodge it out of time. The applicant in the appeal file, belatedly applied for the court extend the time in which to appeal hardly two days ago. Therefore, his averments on oath in this application that there is a pending appeal are not only misleading, lies but out to obstruct the course of justice.
8. The upshot is I find no merits in the application before the court. The same is dismissed with costs.  
Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU  
ON THIS 10TH DAY OF MAY 2023**

**In presence of**

**C.A John Paul**

**Applicant**

**Ochiengo for respondents**

**HON. C.K. NZILI**

**ELC JUDGE**

