



**Nabea v Liruti (Environment and Land Appeal E006 of 2023)
[2023] KEELC 17382 (KLR) (10 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17382 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E006 OF 2023**

CK NZILI, J

MAY 10, 2023

BETWEEN

STANLEY MIRITI NABEA APPELLANT

AND

ISAAC KOOME LIRUTI RESPONDENT

RULING

1. Through an application dated February 15, 2023, the court is asked to stay the execution of a judgment or decree issued on December 16, 2022 by the trial court pending the hearing and determination of the appeal. The 2nd prayer is that the court allows the applicant's statement and documents filed herein as properly filed and served.
2. The basis of the application is on its face and the affidavit in support sworn by Stanley Miriti Nabea on February 15, 2023. The applicant contends that the process of the execution has been initiated; the land in issue may be transferred to 3rd parties, hence rendering the appeal nugatory; the application was filed timeously; he stands to suffer great loss and damage should the application be denied and that he was willing to provide such reasonable security as the court may deem fit to impose for the due performance of the decree.
3. In the affidavit, the applicant has deposed that his suit at the lower court was dismissed while the respondent's counterclaim was allowed. That he has appealed against the judgment. That the implications of the decree are to have part of the suit land transferred to the respondent, which process has started with some subdivision. That if the subdivision and the transfer occur, the subject matter of the appeal shall stand at the risk of being re-transferred to third parties and therefore will be completely alienated from the land, yet it has its tea bushes. Even though the respondent was served with this application and an affidavit filed to that effect on February 28, 2023, no replying affidavit has been filed to oppose the same.



4. Four key considerations under an application for stay have to be established, namely; the filing of the application without unreasonable delay; the demonstration of substantial loss; an offer for security towards the due satisfaction of the decree should the appeal fail, and lastly; evidence that it is in the interest of justice to grant the orders sought.
5. The decree or judgment appealed against was delivered on December 16, 2022, whereas this applicant and the memorandum of appeal were filed on February 15, 2023 and January 30, 2023 respectively. No explanation has been given why the application waited for close to two weeks and close to two months since the delivery of the judgment. There is also no evidence produced to show that a decree was extracted and served upon the Land Registrar for its execution. Additionally, there is nothing attached to the supporting affidavit to show that the process of a land control board consent has been initiated to put on motion the process of execution. The suit at the lower court was about a transfer of 40 x 100 feet of the suit land sold to the respondent by the applicant, but which exercise was allegedly frustrated by the applicant's family.
6. The respondent had taken possession of the land while awaiting the transfer for over 6 years. The consideration of Kshs 90,000/= which he was willing to refund but the respondent allegedly declined it, since the offer was made six years down the line. The trial court ordered that the applicant transfers the land in default of which the executive officer of the court was to execute the transfer documents. A permanent injunction was also issued restraining the applicant from entering into or in any way whatsoever interfering with the respondent occupation of the portion bought. Costs were also awarded to the respondent.
7. Looking at the contents of the judgment, what therefore the applicant is likely to suffer, perhaps is the execution, to the extent that the portion to be transferred to the respondent, is retransferred to third parties.
8. The applicant has offered to deposit security for the due realization of the decree should the appeal not succeed. The appeal preferred by the applicant has also raised some arguable points among them whether a suit for the recovery of land filed after 6 years and based on contract could be sustainable and also whether the agreement between the parties was caught up by the six months rule under the Land Control Act.
9. In the interest of justice and fairness, I take the view that the applicant has surmounted three out of the four considerations to be entitled to a stay of execution. Consequently and since the respondent is in occupation of the portion decreed to him, the court hereby grants the stay of execution in so far as the excision, subdivision, and transfer of the portion are concerned. The applicant shall deposit the original title deed to his land, copies of his ID card and pin certificates as well as four passport-size photographs within 30 days from the date hereof. He shall also deposit Kshs 50,000/= as costs within 30 days from today. In default of any of the above conditions, the stay orders shall stand vacated.
10. The lower court file shall be availed and the matter will be mentioned before the Deputy Registrar on 25.5.2023.
11. Orders accordingly.

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

HON. C.K. NZILI

ELC JUDGE



In presence of

C.A John Paul

Kaimenyi for respondent

Gitonga for applicant

