



**Wanjugu v Wambugu (Environment and Land Appeal
E018 of 2022) [2023] KEELC 17226 (KLR) (8 May 2023) (Ruling)**

Neutral citation: [2023] KEELC 17226 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E018 OF 2022**

JO OLOLA, J

MAY 8, 2023

BETWEEN

JAMES KIMUNYU WANJUGU APPELLANT

AND

BEATRICE WAMUYU WAMBUGU RESPONDENT

RULING

1. By the Notice of Motion dated 1st August 2022, James Kimunyu Wanjugu (the Appellant) prays for an order that pending the hearing and determination of the Appeal herein, this Court be pleased to issue an order of injunction restraining the Respondent from trespassing, selling, letting, leasing and charging or in any other way entering into any dispositions whatsoever interfering with the suit property known as L.R No. Magutu/Ragati/1822.
2. The application which is supported by an Affidavit sworn by the Appellant is premised on the grounds that:
 - (a) The Appellant filed Karatina PMELC No. 9 of 2020 seeking orders for specific performance compelling the Respondent to transfer the suit property. On 8th June 2022, the Trial Court dismissed the Appellant's suit and found that he had not paid the full purchase price thereby breaching the sale agreement;
 - (b) The Appellant is dissatisfied with the decision of the Trial Court and has since filed a Memorandum of Appeal and requested certified copies of typed proceedings and decree;
 - (c) The Appeal raises serious and arguable issues with a likelihood of success and the same ought to be allowed to proceed to determination on merit;



- (d) The Appellant risks suffering an irreparable loss if the Respondent proceeds to commence execution for the award of damages granted by the Court;
 - (e) The Appellant resides on the suit property and has overtime developed the same and he risks losing his constitutional right to ownership of property should the Respondent re-enter and take over the suit property; and
 - (f) In the event the execution proceeds, the Appeal shall be rendered nugatory.
3. In response to the application, Beatrice Wamuyu Wambugu (the Respondent) avers in her Replying Affidavits sworn on 19th October, 2022 that the Appellant’s application does not fulfil the requirements for the grant of an order of stay of execution. In addition, the Respondent asserts that the intended Appeal is not an arguable one to warrant an order of stay.
 4. The Respondent avers that this is a money decree and that the Appellant has not demonstrated that he will suffer substantial loss if the prayers sought are not granted by this Court and that he has also not offered any security for the due performance of the decree. It is her case that the application is nothing but an attempt to delay her from realizing the fruits of her judgment and she urges the Court to dismiss the same.
 5. I have carefully perused and considered the application as well as the response thereto. I have similarly perused and considered the submissions placed before me by the Appellant. I was unable to find any submissions filed on the part of the Respondent.
 6. By his application before me, the Appellant prays for an order of injunction restraining the Respondent from trespassing into, selling, leasing, charging or in any manner whatsoever interfering with all that parcel of land known as Magutu/Ragati/1822 pending the hearing and determination of his Appeal herein.
 7. On the issue of the grant of an injunction pending an Appeal, Order 42 Rule 6 of the [Civil Procedure Rules](#) on which the application is premised provides as follows:

“Notwithstanding anything contained in Subrule (1) of this Rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate Court or Tribunal has been complied with.”
 8. The principles for the grant of such an injunction are now well-settled. As was stated in [Patricia Njeri & 3 Others v National Museum of Kenya](#) [2004] eKLR:
 - “(a) ... an order of injunction pending appeal is a discretionary one which will be exercised against an applicant whose appeal is frivolous;
 - (b) The discretion should be refused where it would inflict greater hardship than it would avoid;
 - (c) The applicant must show that to refuse the injunction would render the appeal nugatory;
 - (d) The Court should also be guided by the principles in *Giella v Cassman Brown* [1973] EA 358.”



9. In the matter before me, the Appellant has urged the Court to grant the injunction pending Appeal for the reason that he and his family reside on the suit property pursuant to an agreement entered into with the Respondent in the year 2017. It is his case that he has overtime invested in and developed the suit property and that if execution proceeds and the Respondent takes back the land, he stands to suffer irreparable loss.
10. From the material placed before me, it is apparent that the Appellant had entered into a Sale Agreement with the Respondent for the purchase of the suit property which was to be hived off a larger parcel of land known as Magutu/Ragati/1800 on 24th May, 2017. It was also apparent that the Appellant took over possession of the suit property subsequent to the agreement.
11. That much is clear from the fact that in the year 2018, the Respondent herein instituted Karatina PMELC No. 48 of 2018 seeking to evict the Appellant from the land on account that he had failed to abide by the terms of the Sale Agreement. It was further apparent that the Appellant persuaded the Court in the said case that he had paid the full purchase price and in a Judgment rendered on 21st November 2019, the Respondent's suit was dismissed with costs to the Appellant.
12. Emboldened by the dismissal of the Respondent's suit, the Appellant proceeded to file Karatina PMELC No. 9 of 2020 seeking orders of specific performance to compel the Respondent to transfer the suit property. The Judgment of that Court dismissing the Appellant's suit for specific performance and awarding the damages to the Respondent for breach of contract as delivered on 8th June, 2022 is the subject of this present Appeal.
13. Looking at the totality of the circumstances herein, it was clear to me that the Appellant presently resides on the suit property and that if execution were to issue, he stood to suffer substantial loss. The Appellant risks being rendered homeless and destitute in the event he is evicted by the Respondent.
14. It was also evident from the apparent contradictions in the two Judgments issued by the two Learned Magistrates both from the Karatina Law Courts on the two suits that the issues raised in the Appeal are not idle but are arguable.
15. In the premises, I find merit in the Motion dated 1st August, 2022 and I allow the same in terms of Prayer No. 4 thereof.
16. The costs of the application shall be in the Appeal.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 8TH DAY OF MAY, 2023.**

In the presence of:

Mr. Muchiri holding brief for Muthoni for the Respondent

Mr. James Kimuyu Wanjugu – the Appellant present in person

Court assistant - Kendi

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J. O. OLOLA

JUDGE

