



REPUBLIC OF KENYA



Gatimu & 6 others v Maganjo & another (Environment & Land Case E022 of 2019) [2023] KEELC 18258 (KLR) (7 June 2023) (Ruling)

Neutral citation: [2023] KEELC 18258 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE E022 OF 2019**

JM MUTUNGI, J

JUNE 7, 2023

BETWEEN

JOSEPH MWANGI GATIMU 1ST RESPONDENT
WACHIRA GATIMU 2ND RESPONDENT
MICHAEL WANJOHI GATIMU 3RD RESPONDENT
GRACE KAGUU KARANI 4TH RESPONDENT
LILIAN WANGITHI GATIMU 5TH RESPONDENT
BENSON KINYUA GATIMU 6TH RESPONDENT
DALMAS MACHARIA GATIMU 7TH RESPONDENT

AND

JOSEPH KARIMI MAGANJO 1ST APPLICANT
MICHAEL KARUBIU MAGANJO 2ND APPLICANT

RULING

1. The Applicant by a Notice of Motion dated 5th May, 2023 expressed to be brought under Section 3A and 6 of the *Civil Procedure Act* and Order 51 Rule 1 of the *Civil Procedure Rules* prays for Orders:-
 1. That this Honourable Court be pleased to stay all proceedings in the Originating Summons dated 11th June, 2019 pending determination of Court of Appeal Civil Appeal Number 065 of 2023.
 2. That the Costs of the application be provided for.
2. The application was premised on the ground set out on the body of the application and the Affidavit sworn in support by the 1st Respondent/Applicant. The Applicant averred that the pending Appeal



arose out of his application seeking to have the present suit struck out which application was dismissed on 5th June, 2020. The Applicant further averred that the Record of Appeal was served on the Respondent's Advocates on 24th April, 2023 which they duly acknowledged. The Applicant contends that the Court of Appeal will determine whether or not the Originating Summons was sustainable or not. He avers that if the suit proceeds to hearing and he is successful in the Appeal, the Appeal could be rendered nugatory and of no consequence. The Applicant further avers that the Respondents stood to suffer no prejudice if the proceedings are stayed to await the determination of the Appeal since they are at any rate in possession of the suit land.

3. The 1st Respondent, Joseph Mwangi Gatimu swore a Replying Affidavit dated 15th May, 2023 in opposition to the Applicant's Affidavit. The 1st Respondent contended that the application was incompetent and an abuse of the Court process. He stated that the Applicant had made a similar application dated 15th December, 2020 seeking more or less the same orders but the Court dismissed the application on 21st January, 2022. The Respondent further stated that owing to the pendency of the present Suit, Kerugoya CM Succession Cause No. 378 of 2016 was ordered to be stayed to await the determination of this case and that the Applicant was one of the Petitioners in the Succession Cause. He further argued the Court of Appeal has not granted a stay of this Court's proceedings and contends the Applicant would suffer no prejudice should this matter proceed to hearing as scheduled on 7th June, 2023.
4. On 18/5/2021 when the application was listed for mention for directions both parties indicated they would rely fully on their filed pleadings and invited the Court to render a Ruling on the basis of the pleadings.
5. I have carefully reviewed and considered the Applicant's Notice of Motion together with the Supporting Affidavit and the Affidavit sworn in response by the 1st Respondent. The singular issue for determination is whether the Applicant has made out a case to warrant a stay of the proceedings before this Court pending the hearing and determination of an Appeal before the Court of Appeal.
6. It is apparent that the Applicant made an application before this Court dated 15th December, 2020 seeking orders:-
 1. That there be a stay of further proceedings in this Kerugoya Environment and Land Case number 22 of 2019 pending the outcome of Court of Appeal Application Number 116 of 2020 for leave to appeal out of time.
 2. That the costs of this application be provided for.

Honourable Justice Cheronon rendered a Ruling on the application on 21st January, 2022 and *inter alia* he stated thus:-

“----I agree with Counsel for the Respondent that even in the most unlikely event that the Applicant's Appeal succeed and this suit proceeds to full hearing, the same would not be rendered nugatory. I also note the Chief Magistrate's Court in Succession Cause Number 378 of 2019 (Kerugoya) had been stayed pending the hearing and determination of this suit. It would therefore be an abuse of the Court process and against the overriding objective of the Civil Procedure Act and the Rules made thereunder to order a further stay of proceedings in this case.”

7. It is therefore clear that this Court has previously dealt with an application seeking a stay of its proceedings pending Appeal which it has declined to grant. I cannot sit on Appeal against my brother Justice Cheronon's orders. He considered the application for stay by the Applicant and did not grant



it. The application before me is not one for review which I could have jurisdiction to entertain and even if it was one, the conditions upon which review could have been allowed have not been met. The avenue open to the Applicant would have to file the application for stay in the Court of Appeal after the application for stay was declined by this Court.

8. In the circumstances I find no merit in the Applicant's application for stay of proceedings before this Court and I dismiss the Notice of Motion dated 5th May 2023 with costs to the Respondents.

RULING DATED, SIGNED AND DELIVERED AT KERUGOYA THIS 7TH JUNE, 2023.

J. M. MUTUNGI

E.L.C JUDGE

