



REPUBLIC OF KENYA



**KENYA LAW**  
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**Gesanda & 9 others v School Committee Nyamwetuereko Primary School & 2 others  
(Environment & Land Case 34 of 2021) [2023] KEELC 18513 (KLR) (5 July 2023) (Ruling)**

Neutral citation: [2023] KEELC 18513 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA  
ENVIRONMENT & LAND CASE 34 OF 2021**

**JM KAMAU, J**

**JULY 5, 2023**

**BETWEEN**

**NYAKWEBA GESANDA ..... 1<sup>ST</sup> PLAINTIFF  
JAPHET MAYAKA MONG'ARE ..... 2<sup>ND</sup> PLAINTIFF  
WILLIAM MWASI OCHARO ..... 3<sup>RD</sup> PLAINTIFF  
NYACHIRO OBANYI ..... 4<sup>TH</sup> PLAINTIFF  
PETER MOSOMI ONDIEKI ..... 5<sup>TH</sup> PLAINTIFF  
ANDREW NYAMORA OBANYI ..... 6<sup>TH</sup> PLAINTIFF  
NYACHIRO KIBWOGO ..... 7<sup>TH</sup> PLAINTIFF  
BENSON OMOGA KIBWOGO ..... 8<sup>TH</sup> PLAINTIFF  
MWAMIYOGO SELF HELP GROUP ..... 9<sup>TH</sup> PLAINTIFF  
SEVENTH DAY ADVENTIST CHURCH EA LTD ..... 10<sup>TH</sup> PLAINTIFF**

**AND**

**THE SCHOOL COMMITTEE NYAMWETUREKO PRIMARY  
SCHOOL ..... 1<sup>ST</sup> DEFENDANT  
THE COUNTY LAND REGISTRAR, NYAMIRA ..... 2<sup>ND</sup> DEFENDANT  
THE COUNTY SURVEYOR ..... 3<sup>RD</sup> DEFENDANT**



## RULING

1. The Judgment Debtor's Application is dated March 30, 2023. Judgment was pronounced in this case on March 2, 2023, when the injunction in place during the pendency of the suit automatically lapsed. According to the Decree dated March 2, 2023 from this court, the Plaintiff prayed for: -
  - a. An order compelling the 2<sup>nd</sup> and 3<sup>rd</sup> Defendants to determine the boundary between land parcels numbers West Mugirango Siamani/1101 On One Hand And Land Parcels Numbers West Mugirango/siamani/5515, 1540, 807, 3733, 2371, 3417, 779, 3978 and 4657 and the events the 1<sup>st</sup> Defendant found to have encroached to any portion of the said Plaintiffs lands an order of eviction do issue against the said Defendant itself, its agents, servants and/or any persons acting on its behalf.
  - b. Costs of this suit.
  - c. Any other relief the court may deem fit to grant.The said case was dismissed with costs.
2. On March 7, 2023 the Plaintiffs, being dissatisfied with the whole decision filed a Notice of Appeal and on March 30, 2023 sought for a stay of execution of the Decree or maintenance of the Status Quo currently prevailing on the suit lands. They say they were pushed by the apprehension that the 1<sup>st</sup> Defendant/Respondent may proceed to enter into the disputed portions leading to serious loss and damage to the Judgment Debtors' parcel of land the Decree Holder and may even put up permanent structures thereon. The 1<sup>st</sup> Decree Holder filed a Replying Affidavit on May 9, 2023 sworn on the previous date opposing the said Application on the ground that the same is being calculated to deny the 1<sup>st</sup> Respondent an opportunity to enjoy the fruits of her Judgment and continue to deprive her of her lawful proprietary rights. She argues that the same is disguised as stay but is a continuation of the temporary injunctive orders in place before the Judgment. She also depones that the Applicant has not shown that the Appeal has chances of success and that the school would continue suffering lack of use of her land.
3. I have read both Submissions and wish to observe from the outset that stay of execution is a discretion of the court accorded to the party who intends to Appeal and who feels that should he succeed on Appeal and the subject matter has already changed hands, then he is going to suffer irreparable harm and the Judgment shall be rendered nugatory. In this particular case, I observe that since the parties have remained in occupation of the portions they were occupying before Judgment but peacefully, I would order that the Status Quo prevailing today be maintained and that none of the parties should develop the portion of land in contention until the determination of the intended Appeal.

**RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 5<sup>TH</sup> DAY OF JULY, 2023.**

**MUGO KAMAU**

**JUDGE**

**In the Presence of: -**

**Court Assistant: Sibota**

**Plaintiffs: 1<sup>st</sup> Plaintiff present in person**

**Defendants: Ms. Opiyo for 2<sup>nd</sup> & 3<sup>rd</sup> Defendants**

