



Ratanya v Land Adjudication and Settlement Officer – Tigania West & 5 others; M’Mukiri & another (Interested Parties) (Environment & Land Petition E018 of 2021) [2023] KEELC 19992 (KLR) (20 September 2023) (Ruling)

Neutral citation: [2023] KEELC 19992 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT & LAND PETITION E018 OF 2021
CK NZILI, J
SEPTEMBER 20, 2023**

IN THE MATTER OF ALLEGED CONTRAVENTION OF FUNDAMENTAL RIGHTS AND FREEDOMS UNDER ARTICLES 40, 47, AND 258 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF ARTICLES 22, 23, AND 165 OF THE CONSTITUTION OF KENYA AND IN THE MATTER OF SECTIONS 7, 1, 16, 20, 21, 23, 24, AND 27 OF THE LAND CONSOLIDATION ACT CAP 283 LAWS OF KENYA AND IN THE MATTER OF SECTION 80 AND 26 (1) (A) (B) OF THE LAND REGISTRATION ACT AND IN THE MATTER OF SECTION 7 OF THE LAND ACT NO. 6 OF 2012 AND IN THE MATTER OF ENVIRONMENT AND LAND ACT 2011

BETWEEN

DOMIZIANO M’CHOKERA RATANYA PETITIONER

AND

THE LAND ADJUDICATION AND SETTLEMENT OFFICER – TIGANIA WEST 1ST RESPONDENT

THE LAND ADJUDICATION AND SETTLEMENT OFFICER URINGU 1 ADJUDICATION SECTION 2ND RESPONDENT

THE DISTRICT LAND REGISTRAR – TIGANIA WEST 3RD RESPONDENT

DIRECTOR OF SURVEY 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

THE HON ATTORNEY GENERAL 6TH RESPONDENT

AND

ERUSTUTO M’MUKIRI INTERESTED PARTY

ALEXANDER BAARIU INTERESTED PARTY



RULING

1. Through an application dated May 15, 2022, the court is asked to
 - a. Allow the firm of Hillary Sandi & Co Advocates to come on record in place of B G Kariuki and Co Advocates and
 - b. Stay of execution of the decree issued on February 8, 2023 pending a hearing and determination of the Civil Appeal No E060 of 2023.
2. The application is based on the reasons on its face and in the supporting affidavit of Domiziano M'Chokera Ratanya sworn on May 15, 2023. The applicant avers that his former advocates on record passed on; he stands to be evicted from the suit land, his pending appeal would be rendered nugatory, he stands to suffer grave loss and damage if execution ensues, he applied on time, he undertakes to preserve the structures and status of the land; his appeal has high chances of success.
3. In the supporting affidavit, the applicant avers that his petition was dismissed, leading to the appeal in the Court of Appeal in Nyeri. He attached a copy of the memorandum of appeal and photographs showing developments on the suit land as annexures marked DMK 1-3 respectively.
4. The interested parties oppose the application through a replying affidavit of Erasto M'Mukiri sworn on May 26, 2023, on the basis that the application is based on falsehoods; that the applicant has interfered with the boundaries to L R No's Uringu 1/3420 & 3421, which parcels of land were under the possession of them as dependants of the late M'Ajuri and M'Tome whereas the applicant was occupying L R No Uringu 1/98. Lastly, the interested parties aver that the dispute has been going on for the last 20 years, where the applicant has lost in every step, and therefore, litigation should end.
5. When the matter came up for an inter-parties hearing on May 29, 2023, counsel for the applicants told the court that the interested parties moved to occupy the land after the judgment. The application before the court is brought under Order 42 Rule 6 of the *Civil Procedure Rules* as read together with Order 22 Rule 22 of the said Rules.
6. To obtain a stay of execution pending appeal, a party must demonstrate that the application is filed without unreasonable delay; show a substantial loss; offer security for the due realization of the decree should the appeal not succeed, and lastly, establish that it is in the interest of justice that the orders sought should be allowed.
7. In *James Wangalwa vs. Agnes Naliaka Cheseto* (2012) eKLR, the court observed that a party should offer more information on what substantial loss was other than merely saying that the process of execution has been put into motion, given that execution by itself was a legal process consequent upon a decision being made in favor of a decree-holder.
8. Order of 42 of the Civil Procedure Rules envisages a stay of an execution of a decree. In *Jeniffer Akinyi Osodo vs. Boniface Okumu Osodo and 3 others* (2021) eKLR, the court cited with approval *Western College of Arts and Applied Sciences vs. E.P Oranga and 3 others* (1976) eKLR, that in a dismissal of a suit, any execution could only be in respect to costs since the court had not ordered any of the parties to do anything or to pay any sum. Further, the court cited with approval *Raymond M. Omboga vs Austine Pyan Maranga* Kisii HCCA No. 15 of 2010, that a negative order was incapable of stay for the applicant had lost nothing since the dismissal meant the applicant would remain in a situation that he was in before coming to court.



9. In the case of *Cooperative Bank of Kenya Ltd vs. Banking Insurance and Finance Union (K)* (2016) eKLR, the court observed that an order of stay of execution pending appeal was ordinarily an interim order which seeks to delay the performance of a positive obligation set out in a decree as a result of a judgment and that it presupposes the existence of a situation to stay called a positive order. The court also cited with approval *Kenya Commercial Bank Ltd vs. Tamarind Meadows Ltd & 7 others* (2016) eKLR, that a negative order could not be stayed.
10. Applying the preceding principles and caselaw to the instant application, this court, by a judgment dated February 8, 2023, dismissed the petition dated June 8, 2021 on the ground *inter-alia* of pendency of an appeal at the court of appeal on the same issues raised in the petition and that it was an abuse of the court process. No positive order was made in favor of the interested parties or the respondents. There is no evidence before this court of any change of status of the suit land since the dismissal of the petition. Similarly, no evidence has been adduced that an eviction notice was served upon the applicant under Sections 152A, B, C, D, and E of the [Land Act](#).
11. Nothing has been established that the structures depicted on an annexure marked DMR "3" stand on the suit land, its value, and its status. No notice of appeal or evidence was attached to show when the applicant filed his appeal at the Court of Appeal Nyeri. Additionally, there is no indication why the applicant has failed to seek for the stay orders in the court where his appeal lies.
12. It is also not in the best interest to grant the orders sought, given the replying affidavit by the interested parties, which has raised issues regarding abuse of court process, inordinate delay, and the fact that the applicant's premises lie on L.R. No. Uringu 1/98 and not on the interested party's suit parcels of land.
13. I find the application lacking merits. The same is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 20TH DAY OF SEPTEMBER 2023**

In presence of

C.A Kananu/Mukami

Erastus M'Muchiri

Alexander Baariu

HON. CK NZILI

ELC JUDGE

PET E018 OF 2021 - RULING	0
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