



**Mwingirwa v Nkuraru & 2 others (Environment and Land Appeal  
E003 of 2023) [2023] KEELC 21265 (KLR) (1 November 2023) (Ruling)**

Neutral citation: [2023] KEELC 21265 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E003 OF 2023  
CK NZILI, J  
NOVEMBER 1, 2023**

**BETWEEN**

**MBIRITHI JEREMIAH MWINGIRWA ..... APPELLANT**

**AND**

**M'MAILUTHA NKURARU ..... 1<sup>ST</sup> RESPONDENT**

**DISTRICT LAND ADJUDICATION SECTION - TIGANIA .. 2<sup>ND</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. The 1<sup>st</sup> applicant asks the court by an application dated July 17, 2023 to stay the lower court decree issued on June 30, 2023 to grant inhibition orders against LR No. Kianjai/Kianjai/1842, and in the alternative, the status quo obtaining as of June 30, 2023 over the suit land and its occupation by the appellant be maintained until this appeal is heard and determined.
2. The application is based on the grounds on its face and a supporting affidavit sworn by Mbirithi Jeremiah Mwingirwa on June 17, 2023. The applicant avers that the subject land is registered under his name, and even though he has been in occupation and use of the land, the 1<sup>st</sup> respondent moved quickly to execute the lower court decree. If the execution occurs, the applicant says third parties are likely to be transferred the land. In the supporting affidavit, the deponent avers that he has been occupying the land since 2017, where he has fenced, planted trees and erected a semi-permanent house.
3. The applicant further avers that he had filed Appeal No 69 of 2019 but lost, though the decree was not appealed against. He avers that the trial court has issued another decree conflicting with the earlier one and was likely to cause chaos. In addition, the applicant avers that he has applied without inordinate delay, land is emotive, the 1<sup>st</sup> respondent and his people are provocative, violent and have assaulted his wife in the past, and there was a pending Criminal case No 720 of 2019 at Tigania Law Courts. He



- attached copies of the title deed decree in ELC No 70 of 2018, appeal in ELC No 69 of 2019, decree thereof, and copy of the bond or charge sheet as annexures marked MJ 1 – 5, respectively.
4. The 1<sup>st</sup> respondent opposes the application through a replying affidavit sworn by M'Mailutha Nkururu on September 13, 2023. The grounds are that the application was replete with falsehoods, a perpetuation of fraud of an unlawfully acquired title it was to steal a match; the applicant has never been in occupation of the land since it was gathered by his father in 1966, despite obtaining an illegal judgment in 2018, no eviction has occurred and that the applicant has been using the court to steal the land or block him from utilizing it. Further, the 1<sup>st</sup> respondent avers that the applicant's family forcefully attempted to enter the land, precipitating a fight. Lastly, the 1<sup>st</sup> respondent avers that the A/R records would confirm that his name was irregularly and or illegally cancelled and that of the applicant inserted in the records. The 1<sup>st</sup> respondent attached a copy of the order received on August 24, 2023 and a bundle of adjudication records as annexures marked MN1 – 2, respectively.
  5. The applicant relies on written submissions dated October 23, 2023 reiterating that he has met the requirements for a grant of stay orders. On the other hand, the 1<sup>st</sup> respondent in written submissions dated October 24, 2023 urges the court to find the application lacking merits. He states, guided by *Joel Arap Koeb v Alice Wambui Magandu & 3 others* (2018) eKLR, that a greater injustice would be occasioned if the orders sought were granted. Further, it is submitted that since both parties are claiming the land, the scales of justice if balanced, would require the status existing to be maintained to the effect that he remains on his land since he has been in occupation of the suitland, unlike the applicant.
  6. A party seeking a stay of execution and an inhibition order pending hearing and determination of an appeal has to make the application on time, demonstrate substantial loss, offer security for the due performance of the decree should the appeal not succeed, and lastly, demonstrate that it was in the interest of justice that the orders sought to be granted.
  7. In *James Wangalwa v Agnes Naliaka Cheseto* (2012) eKLR, the court observed that execution was a legal process and that it was not enough to allege substantial loss without demonstrating it with tangible evidence. Further in *Arun C Sharma v Ashana Raikundalia & 5 others* (2015) eKLR, the court observed that security for the due performance of a decree was not a punishment to the judgment debtor but was a necessity since a decree was like a debt owed to the decree-holder. On delay, the courts have held that it all depends on the circumstances of each case since even a one-day delay could be inordinate.
  8. In this application, the applicant has demonstrated that he has a title deed and a previous decree of a competent court in his favor, which was issued before the instant decree was appealed against. On the other hand, the 1<sup>st</sup> respondent has termed the title and the decree fraudulently and illegally obtained. The applicant and the 1<sup>st</sup> respondent do not agree on who is occupying the land. The grounds to the notice of motion refer to the 1<sup>st</sup> respondent as the one in occupation, while the replying affidavit mentions the applicant as the one on the land. No evidence has been attached to show the nature of the applicants' developments on the suit land, its value, particulars, and status for this court to establish what irreparable loss or damage was likely to be suffered should the execution occur.
  9. There was no explanation given why the earlier decree was not executed on time or at all and, more importantly, why the disclosure was not made before the trial court of a previous suit and or decree to avoid the alleged conflicting decree from the same court. Additionally, the applicant has not explained why it took over two weeks to apply for a stay of execution. Further, the applicant has not offered any security for the due realization of the decree should the appeal not succeed. Lastly, given the two disclosed existing decrees, granting any interim orders under the circumstances would not be in the



interest of justice. The upshot is that I find the application dated July 17, 2023 lacking merits. The same is dismissed with costs. Lower court file be availed for mention before the deputy registrar on November 30, 2023.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 1<sup>ST</sup> DAY OF NOVEMBER 2023.**

**In presence of**

C.A Kananu/Mukami

Miss Asuma for Mutembei for the 1<sup>st</sup> respondent

1<sup>st</sup> respondent

Miss Maina for Mbaikyatta for the 2<sup>nd</sup> and 3<sup>rd</sup> respondent

**HON. CK NZILI**

**ELC JUDGE**

