



**Mugambi v Gitimbu (Environment and Land Appeal E006 of 2023)  
[2023] KEELC 21948 (KLR) (4 December 2023) (Ruling)**

Neutral citation: [2023] KEELC 21948 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT ISIOLO  
ENVIRONMENT AND LAND APPEAL E006 OF 2023  
PM NJOROGE, J  
DECEMBER 4, 2023**

**BETWEEN**

**FLORENCE WANJA MUGAMBI ..... APPELLANT**

**AND**

**GAKURE GEOFFREY GITIMBU ..... RESPONDENT**

**RULING**

1. This application is dated 20<sup>th</sup> March, 2023 and seeks the following orders:-
  1. That this application be certified urgent and the same be heard on priority basis.
  2. That the Honourable Court be pleased to order stay of execution of the Judgment and Decree of the Honourable Chief Magistrate L. Mutai delivered on 28<sup>th</sup> February 2023 in MCELC No. 18 of 2021 pending hearing and determination of this application.
  3. That the Honourable Court be pleased to order stay of execution of the Judgment and Decree of the Honourable Chief Magistrate L Mutai delivered on 28<sup>th</sup> February, 2023 in MCELC No. 18 of 2021 pending hearing and determination of the Appeal before this court.
  4. That this Honourable Court be pleased to issue a temporary injunction restraining the Respondent, his agents, employees, advocates, auctioneers or any person acting on his behalf from interfering, intimidating, harassing, evicting and/or in any other manner interfering with the property known as Plot No. 856 Mwangaza B pending hearing and determination of this application.
  5. That this Honourable Court be pleased to issue temporary injunction restraining the Respondent, his agents, employees, advocates, auctioneers or any person acting on his behalf from interfering, intimidating, harassing, evicting and/or in any other manner interfering with



the property known as Plot No. 856 Mwangaza B pending hearing and determination of the Appeal.

6. Any other relief That the Honourable Court deems fit to grant.
  7. The costs of this Application be provided for.
2. The application is buttressed by the affidavit of Florence Wanja Mugambi and has the following grounds:
- i. That judgment has been entered in favour of the Respondent and the Applicant stands to be evicted from her suit property.
  - ii. That the applicant has appealed against the decision of the Judgment and Decree of the Honourable Chief Magistrate L Mutai delivered on 28<sup>th</sup> February, 2023.
  - iii. That the Applicant's Appeal as filed raises substantive and meritorious grounds of appeal and the applicant is reasonably apprehensive That if the Respondent evicts and/or deals in any way whatsoever with the subject suit land the said appeal will be rendered nugatory.
  - iv. That now the Respondent has initiated the process of eviction against the applicant.
  - v. That the applicant will suffer irreparable harm if the orders for stay of execution and orders of injunction are not granted.
  - vi. That this application has been filed in time.
  - vii. That the applicant is ready and willing to abide by such terms as this court deems just and expedient in granting of the order sought herein.
  - viii. That the Respondent will not suffer any prejudice in the event the orders sought for in this application are granted and it is only fair and just that the orders sought herein are granted.
  - ix. That it is the wider interest of justice That the orders sought be granted.
3. The parties have made extensive submissions in their efforts to buttress their diametrically incongruent assertions.
4. I have found That juxtaposing the contents of the Memorandum of Appeal and the orders issued by the trial court, will allow me to make an expeditions decision in this application. In her judgment delivered on 28<sup>th</sup> February, 2023, the Hon. L Mutai , Chief Magistrate entered Judgment as follows:
- a. That an order of permanent injunction is hereby issued against the Defendant from trespassing and/or encroaching the Plaintiff's Plot No. MB 276 Isiolo Town.
  - b. An order of eviction is hereby issued against the defendant from Plot No. MB 276 Isiolo Town. (sic)
  - c. The plaintiff shall have Kshs. 200,000/= as damages plus mesne profits as a result of trespass by the defendant.(sic)
  - d. The plaintiff shall the costs and interests at court's rates.
5. Paragraph 2 in the Memorandum of Appeal reads as follows:
- “2 That the learned Magistrate5r4 erred in law and fact by failing to consider That the appelland was in actual occupation of her Plot No. 856 Mwangaza B having



carried out developments thereon from the year 2000 way before the balloting exercise was carried out in the year 2005”

6. It is veritably pellucid That the Memorandum of Appeal and the orders issued by the trial court relate to two different Plot numbers. In applications for orders against orders issued by the lower courts, the centrality, the universality and the cardinality of the right practice is to have a clear nexus to the orders issued by the trial court. Whereas the trial Magistrate’s order unequivocally refers to Plot No. MB 276 Isiolo Town, the Memorandum of Appeal and this application at paragraph 4 refer to Plot No. 856 Mwangaza B. Then how can a court of law stay execution of a Judgment which does not contain the property introduced in the Memorandum of Appeal and in the application? This court is unable to do That.
7. I have considered the authorities the pleadings and the submissions proffered by the parties to buttress their diametrically and veritably incongruent assertions. I find That this application lacks merit.
8. In the circumstances, I issue the following orders:
  - a. This application is dismissed.
  - b. Costs shall follow the event and are awarded to the respondent.

**DELIVERED IN OPEN COURT AT ISIOLO THIS 4<sup>TH</sup> DAY OF DECEMBER, 2023**

Court assistant: Balozi/Rahma

Miss Mwiti holding brief Mwiti for the Appellant.

Gikaara Wangechi holding brief for Otieno for the Respondent.

**HON JUSTICE P.M NJOROGE**

**JUDGE**

