



Macere (Suing as the legal representative of the Estate of Peter Macere Kamundo (Deceased) v Kirinyaga County Government & 2 others (Environment and Land Appeal 9 of 2020) [2022] KEELC 15708 (KLR) (8 July 2022) (Ruling)

Neutral citation: [2022] KEELC 15708 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT AND LAND APPEAL 9 OF 2020**

EC CHERONO, J

JULY 8, 2022

BETWEEN

NANCY MUTHONI MACERE (SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF PETER MACERE KAMUNDO (DECEASED) APPELLANT

AND

KIRINYAGA COUNTY GOVERNMENT 1ST RESPONDENT

REGINA MUTHONI MWANGI 2ND RESPONDENT

MICHAEL MUTHII MWANGI 3RD RESPONDENT

RULING

1. The appellant/applicant has moved this honourable court vide a notice of motion dated June 4, 2020 seeking the following orders:-
 1. (Spent).
 2. That this honourable court be pleased to issue an order extending stay of execution pending hearing and determination of our application.
 3. That the honourable court be pleased to issue an order for stay of execution pending the hearing and determination of our appeal.
 4. That this honourable court be pleased to admit our appeal and issue directions for hearing and determination.
 5. That the costs of this Application be provided for.
2. The application is premised on grounds shown on the face of the said application and the affidavit of Philip Nyoro sworn the same date.



3. The 1st respondent through her legal officer, one Carolyne Kinyua filed a replying affidavit in opposition to the said application.
4. When the matter came up for hearing on 10/2/2022, the parties agreed to canvass the said application by written submissions.

The Applicant's summary of facts and submissions

5. From his affidavit in support of the said application, the learned Counsel Mr. Philip Nyoro deposed that there was an order issued on 5/6/2020 directing the appellant/applicant to file their Appeal within 14 days, stay of execution for 12 months and requiring the appellant to deposit KSHS 100,000/= in an escrow account within 30 days.
6. That in compliance with the court's orders, the appellant filed their Memorandum of Appeal on 11/6/2020. On 6/7/2020, they sent account opening letters to the 1st respondent's Counsel to facilitate the opening of the joint account. However, the 2nd respondent was not able to sign the account opening forms as she did not have a Counsel representing her but after the parties engaged, they were able to record a consent compromising the court's orders dated 5/6/2020 by agreeing to deposit the sum of Ksh. 100,000/= in court as security for costs in the alternative.
7. That when the matter came up for adoption of the alternative consent order on 21/10/2020, the court directed the interested Party (Michael Muthii Mwangi) to acquire a power of Attorney to enable him represent the 2nd respondent.
8. In summary, the applicant stated that 12 months stay of execution granted by the court lapses on 6/6/2021 and as such the appellant/applicant stands to suffer great harm and the appeal rendered nugatory. In his submissions, the appellant stated that Order 50 Rule 6 *CPR* grants this court powers to enlarge time where a limited time has been fixed for doing any act or taking proceedings under the rules or by summary notice or by order of the court. The appellant submitted that the application has been brought without unreasonable delay. She further submitted that the matter has been in court severally under Kerugoya MISC. 11 of 2019 where the interested party has been attending court but is yet to meet the conditions issued by the court in order to be allowed to officially represent the 2nd respondent. He cited the following cases in support of the application; - *Chris Munga N. Bichage v Richard Nyagaka Tongi & 2 others*, [2016] eKLR, *Nicholas Kiptoo Arap Korir Salat v The Independent Electoral and Boundaries Commission & 7 others* (2014) eKLR, *Chairman, Cooperative Tribunal & 8 others ex-parte Management Committee Konza Ranching & Farming Co-operative Society Ltd* (2014) eKLR.

The 1st Respondent's Summary Of Facts And Submissions

9. The 1st respondent through her legal officer stated that the orders for stay lapsed on 5/6/2020 and that the Appellant/Applicant waited for a whole year to expire and then bring up the issue of the 2nd Respondent not executing documents. She stated that the Appellant/Applicant is guilty of laxity and has not come to court with clean hands.

Analysis And Decision

10. I have considered the application and the supporting affidavit dated 4/6/2021. I have also considered the replying affidavit by Carolyne Kinyua and the rival submissions by the parties. It is not in dispute that on 5/6/2020, this court in MISC. Application NO. 11 of 2019 granted the several conditional orders to the appellant/applicant. One of the orders was for stay of execution for 12 months after which



it shall lapse. The appellant/applicant has stated that unless the application is allowed, the appeal will be rendered nugatory.

11. From the explanations given in the supporting affidavit, I am satisfied that the application has been brought without unreasonable delay. I also find that it will be prudent and in the interest of justice if a stay of execution order is given pending hearing and determination of the Appeal.
12. The upshot of my evaluation is that the Notice of Motion dated June 4, 2021 is merited and the same is allowed as follows:
 - a. The stay of execution orders issued by this honourable court on June 5, 2020 are hereby reinstated and extended until this Appeal is heard and determined.
 - b. This Appeal having been admitted to hearing on 15/4/2021 pursuant to section 79B CPA, prayer No. 4 of the application is overtaken by events.
 - c. The appellant to compile his record of appeal within 30 days from today.
 - d. Mention on 20/9/2022 for further directions.
 - e. Costs of this application to abide the appeal.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 8TH JULY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

In the presence of:-

Wandia Murimi holding brief for Nyoro for Applicant

Respondent/Advocate - absent

Kabuta, Court Assistant – present.

