



**Warui & another v Muriuki (Environment & Land Case
58 of 2016) [2022] KEELC 15679 (KLR) (1 July 2022) (Ruling)**

Neutral citation: [2022] KEELC 15679 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KERUGOYA
ENVIRONMENT & LAND CASE 58 OF 2016**

EC CHERONO, J

JULY 1, 2022

BETWEEN

LOISE KANYOKORA WARUI 1ST PLAINTIFF

JACKLINE WAMWIRUA 2ND PLAINTIFF

AND

GLADYS NJERI MURIUKI DEFENDANT

RULING

1. By a Notice of Motion dated February 2, 2022, the Plaintiffs/Applicants are seeking the following orders;-
 1. The Deputy Registrar of the Court be authorized to be signing necessary documents to facilitate the transfer of land parcel number Mwerua/Baricho/1408,1412,1413,1416 and 1418 in the name of Jackline Wamwirua as per the judgment delivered on March 12, 2021.
 2. That the land Registrar Kirinyaga be ordered to dispense with production of the titles to land parcel Mwerua/Baricho/1408, 1412, 1413, 1416 and 1418 during the transfer process.
 3. That the costs of this application be provided for.
2. The application is supported by an affidavit sworn by Jackline Wamwirua and grounds apparent on the face thereof. According to the applicant, this Honourable Court entered judgment in their favour on 12/3/2021 and ordered land parcel No Mwerua/Baricho/1408, 1412, 1413, 1416 and 1418 to be registered in their names jointly. The applicant further stated that the defendant/respondent has refused to sign the relevant documents to effect the transfers hence necessitating this application. She also stated that her mother Loise Kanyakora Warui who is her co-plaintiff in this case passed on after judgment and that the suit properties should now be registered in her name.



3. The Respondent opposed the application by way of a replying affidavit sworn on 24/5/2022. According to the Respondent, she was dissatisfied with the Judgment of this Court and has filed an appeal at the Court of Appeal at Nyeri being No 18 of 2022. She stated that she lives on the suit land and executing the decree before exhausting the available appeal machinery would be prejudicial.

Analysi and Decision

4. I have considered the application, the affidavits in support and in opposition thereto. I have also considered the submission by the advocates appearing for both parties and the applicable law. It is not in dispute that this Court delivered judgment in respect of the dispute between the parties in this case on March 12, 2021. It is not also in dispute that the defendant/Respondent made an application for stay pending appeal under Order 42 Rule 6(2) [CPR](#) which was dismissed on 21/1/2022.
5. Once the application for stay of execution was dismissed on 21/1/2022, there is nothing preventing the plaintiffs/applicants from enjoying the fruits of their judgment. The argument by the respondent that she would be prejudiced if execution is allowed before exhausting the available appeal machinery is untenable in law. An appeal cannot operate as a stay under Order 42 Rule 6(1) [CPR](#). Stay of execution can only be allowed on terms and conditions set out under Order 42 Rule 6(2) [CPR](#). The applicant had brought an application for stay pending appeal under Order 42 Rule (6)(2) which application was dismissed on 21/1/2022. There is therefore nothing to prevent the plaintiffs/applicants from enjoying the fruits of the judgment herein. In the result, I find the application dated February 2, 2022 merited.
6. Before I conclude, I have noted the submissions by counsel for the defendant/respondent that the 1st plaintiff/decreed holder Loise Kanyokora Warui has since passed on and that the application is premature. That argument in my view cannot prevent the execution of the decree herein as the cause of action continues to the surviving plaintiff pursuant to Order 24 rule 2 CPR.
7. For all the reasons given hereinabove, I allow the Notice of Motion dated February 2, 2022 as prayed with costs to the plaintiff/applicant.

RULING READ, DELIVERED AND SIGNED IN THE OPEN COURT AT KERUGOYA THIS 1ST JULY, 2022.

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HON. E.C. CHERONO

ELC JUDGE

In the presence of:-

1. Ms Ndungu holding brief for Maina Kagio for Plaintiff
2. Ms Mkenya holding brief for Kinyua Kiama
3. Kabuta – Court Assistant.

