



Gichuki & 5 others (Suing on behalf and as officials on behalf of Mathari Villagers Self Help Project's membership) v Registered Trustees Catholic Archdiocese of Nyeri (Environmental and Land Originating Summons 119 of 2013) [2022] KEELC 14522 (KLR) (3 November 2022) (Ruling)

Neutral citation: [2022] KEELC 14522 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIROMENTAL AND LAND ORIGINATING SUMMONS 119 OF 2013**

JO OLOLA, J

NOVEMBER 3, 2022

BETWEEN

**TARCISIO NYAGA GICHUKI 1ST PLAINTIFF
JAMES KING'ORI MWAI 2ND PLAINTIFF
PAUL MURAGE NDIANG'UI 3RD PLAINTIFF
JOSEPH MACHARIA MUIRURI 4TH PLAINTIFF
JOSEPHINE NJERI KANYI 5TH PLAINTIFF
EUSEBIO WACHIRA WANJAU 6TH PLAINTIFF
SUING ON BEHALF AND AS OFFICIALS ON BEHALF OF MATHARI
VILLAGERS SELF HELP PROJECT'S MEMBERSHIP**

AND

**REGISTERED TRUSTEES CATHOLIC ARCHDIOCESE OF
NYERI DEFENDANT**

RULING

1. By the notice of motion dated December 8, 2021, the Registered Trustees Catholic Archdiocese of Nyeri (the defendant/applicant) prays for an order that pending the hearing and determination of the intended appeal to the Court of Appeal, this honourable court be pleased to grant a stay order against execution of its ruling dated November 18, 2021 and all other consequential orders thereto.
2. The application which is supported by an affidavit sworn by the defendant's Legal Officer David Mutahi is premised on the grounds *inter alia*:



- (i) That the court dismissed on November 18, 2021 the defendant's application dated March 14, 2019 and allowed an application filed by the plaintiffs dated January 22, 2019;
 - (ii) That while the court granted leave to appeal, no stay orders were granted;
 - (iii) That subsequently the defendant filed a notice of appeal dated November 24, 2021, signifying its express intention to appeal the decision of this court to the Court of Appeal;
 - (iv) That the defendant has an arguable appeal with high chances of success;
 - (v) That it is not in doubt the plaintiff would immediately execute the ruling and orders emanating therefrom and if the execution proceeds, the defendant will not only lose a considerable portion of its parcels of land but its activities, most of which are of great public importance will either be interfered with and/or halted completely, occasioning great loss and damage upon the defendant;
 - (vi) That further, if execution proceeds, the intended appeal will be rendered nugatory and reduced to an academic exercise as the parcel of land in question will have been transferred to the plaintiffs;
 - (vii) That the plaintiffs stand to suffer no prejudice if stay of execution is granted since the defendant has been barred by orders of this court from transferring ownership of the subject properties;
 - (viii) That the instant application has been brought timeously and without unreasonable delay;
 - (ix) That it is therefore meet and just that this court orders for stay of execution of its ruling and all consequential orders thereto.
3. The application is opposed. In a replying affidavit sworn on their behalf on January 28, 2022 by the 1st plaintiff Tarcasio Nyaga Gichuki as filed herein on February 10, 2022, the plaintiffs aver that this application is an afterthought and that the same has only been filed to throw a spanner in the works and prevent the parties from enjoying the fruits of the judgment.
 4. The plaintiffs further aver that the defendant's claim is spurious and without merit. They assert that the application has not met the threshold for grant of stay pending appeal as no loss has been demonstrated by the applicant.
 5. The plaintiffs further assert that the defendant has never served them with the notice of appeal ever since it was lodged on November 26, 2021 and that they have only received the same as an attachment to the defendants' supporting affidavit filed herein.
 6. I have carefully perused and considered the defendant's application as well as the response thereto by the plaintiffs. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
 7. The defendant herein has urged this court to stay execution of the ruling dated November 18, 2021 and all other consequential orders thereto pending the hearing and determination of an intended appeal to the Court of Appeal. On matters of stay of execution, order 42 rule 6(2) of the [Civil Procedure Rules](#) provides thus:

“(2) No order for stay of execution shall be made under sub-rule (1) unless –



- (a) The court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - (b) Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
8. Accordingly, for one to sustain an application for stay of execution pending appeal, it needs to be demonstrated first and foremost, that the application has been made without unreasonable delay. Secondly, the applicant ought to satisfy the court that he/she stands to suffer substantial loss if the order were not granted and finally, the applicant needs to offer such security as may ultimately be binding upon him for the due performance of the decree.
9. As was stated in *RWW -vs- EKW* (2019) eKLR:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
10. In the matter herein, this court delivered a ruling on November 18, 2021 by which ruling the court authorized the excision of 600 acres of land from certain parcels of land presently registered in the name of the defendant and ordered that the same be forthwith transferred to the names of the plaintiffs. By their application herein, the defendant contends that it stands to suffer substantial loss as it stands to lose a considerable portion of its land and that the activities it is currently carrying thereon are likely to be halted and/or interfered with.
11. In the circumstances herein, this court takes note that the plaintiffs do not presently occupy the 600 acres of land awarded to themselves and that the unoccupied portion is currently being used by the defendant which claims to be running certain projects thereon. It is apparent that if an order of stay is not granted herein, the plaintiffs are likely to interrupt the activities of the defendant by moving into and occupying the same before the appeal is heard and determined. On the contrary if the orders of stay are granted, the *status quo* will be maintained with the plaintiffs continuing to occupy the portions that they are currently utilizing.
12. Accordingly I am persuaded that there is merit in the defendant’s application. I allow the same in terms of prayer No 3 thereof.
13. The costs of this application shall in the appeal.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT NYERI
THIS 3RD DAY OF NOVEMBER, 2022.**

In the presence of:

Mr. Karweru for the Respondents

Mr. Mwachoji for the Appellants

Court assistant - Kendi



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J. O. OLOLA

JUDGE

