



**Nderi v Justus (Environment & Land Case 93 of 2015)  
[2022] KEELC 14521 (KLR) (3 November 2022) (Ruling)**

Neutral citation: [2022] KEELC 14521 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT & LAND CASE 93 OF 2015  
JO OLOLA, J  
NOVEMBER 3, 2022  
(FORMERLY NYERI HCCC 43 OF 2008)**

**BETWEEN**

**MARGARET WANGECHI NDERI ..... PLAINTIFF**

**AND**

**JULIA WANJIKU JUSTUS ..... DEFENDANT**

**RULING**

1. By the Notice of Motion dated and filed herein on 7<sup>th</sup> October 2021, Julia Wanjiku Justus (the Defendant) prays for orders:-
  3. That this Honourable Court be pleased to grant the firm of Ngigi Gichoya & Company Advocates leave to come on record for the Defendant in this matter in place of the firm of Wahome Gikonyo & Company Advocates;
  4. That this Court be pleased to grant the Defendant/Applicant an order of stay of execution of the decree/Judgment dated 30<sup>th</sup> June, 2021 pending the hearing and determination of the intended Appeal (before) the Court of Appeal;
  5. Costs of this application.
2. The application which is supported by an Affidavit sworn by the Defendant on the same day and a Supplementary one sworn on 21<sup>st</sup> February, 2022 is premised on the grounds:
  - (i) That on 30<sup>th</sup> June, 2021 this Court delivered a Judgment and issued a decree whose effect will drastically change the ownership rights of the Defendant over land parcel number Nyeri Municipality Block 1/1133;



- (ii) That the Defendant is aggrieved by the said Judgment and decree and intends to appeal to the Court of Appeal;
  - (iii) That the Defendant has duly lodged a Notice of Appeal and applied for certified copies of proceedings;
  - (iv) That the intended Appeal is not frivolous but the same may be rendered nugatory unless stay orders are issued; and
  - (v) That the Defendant shall suffer heavily if the decree herein is executed while the appeal is pending before the Court of Appeal.
3. Margaret Wangechi Nderi (the Plaintiff) is opposed to the orders sought. In her Replying Affidavit sworn on 25<sup>th</sup> October, 2021 as filed herein on 26<sup>th</sup> October 2021, the Plaintiff avers that the application by the Defendant lacks merit, is frivolous and falls short of all the requirements under Order 42 Rule 6 of the Civil Procedure Rules.
  4. The Plaintiff asserts that the Defendant has failed to demonstrate that she will suffer substantial loss if the orders are not granted. The Plaintiff further asserts that the Defendant has failed to demonstrate that their application has been brought within a reasonable time and/or that she will offer security for the due performance of the decree.
  5. The Plaintiff avers that the Defendant's assertion that the Appeal shall be rendered nugatory is dishonest as the Plaintiff is the one who has been in occupation of the suit land and has developed the same since the year 2001. The Plaintiff avers that the effect of the Judgment is to have the land transferred to herself in line with the Agreement executed between herself and the Defendant's late husband and that even if the land is transferred and the Appeal succeeds, the transfer can always be cancelled or reversed.
  6. The Plaintiff further avers that she will be greatly prejudiced if the orders sought are granted as she has waited for 20 long years to have the suit property transferred to herself as per the Agreement and that she is entitled to enjoy the fruits of her Judgment.
  7. I have carefully perused and considered the Defendant's application as well as the response thereto by the Plaintiff. I have similarly perused and considered the written submissions and authorities placed before me by the Learned Advocates representing the parties.
  8. The Defendant herein prays for a stay of execution of the Judgment of this Court delivered on 30<sup>th</sup> June, 2021 pending the hearing and determination of the Appeal she has filed in the Court of Appeal. The application is made inter alia, pursuant to Order 42 Rule 6 of the Civil Procedure Rules. Sub-rule (2) of the said Order provides thus:
    - “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.
  9. It is thus clear from the above that to justify the grant of an order of stay of execution pending appeal, the Applicant must file the application without unreasonable delay, demonstrate that she will suffer



substantial loss unless the order of stay is granted and offer security for the due performance of any order that may ultimately be binding on him.

10. In the matter before me, the Judgment sought to be stayed was delivered on 30<sup>th</sup> June 2021, some four (4) months before the application before me were filed. While the Defendant avers that she failed to bring the application earlier because of a misunderstanding with her previous Advocates on record, I note that the Judgment required the Defendant to execute the transfer of the land to the Plaintiff within 14 days.
11. It is apparent from the application before me that the Defendant is yet to comply with that directive and given the timelines given by the Court in the said Judgment, I am in agreement with the Plaintiff that this application was not filed as required without unreasonable delay.
12. Even if this Court were to excuse the delay in filing the application, I was not persuaded either that the Defendant stands to suffer substantial or heavy loss as she puts it unless the stay is granted. As was stated in *Machira T/A Machira & Company Advocates -vs- East African Standard (No. 2) (2007) 2 KLR 63*:  

“In this kind of application for stay, it is not enough for the Applicant to merely state that substantial loss will result. He must prove specific details and particulars ... Where no pecuniary or tangible loss is shown to the satisfaction of the Court, the Court will not grant a stay.”
13. In the matter before me, the Defendant avers both in the Supporting and Supplementary Affidavits that she will suffer substantial loss. She has however not made any attempt to explain or give the particulars of loss and/or how her Appeal stands to be rendered nugatory.
14. From the material placed before me, it was not disputed that the Plaintiff has been in possession and occupation of the suit property since the year 2001 and that she has developed the same. That property however remains in the name of the Defendant’s late husband and all that the Court ordered was that the same be transferred in the name of the Plaintiff as per an Agreement said to have been executed between the Plaintiff and the Defendant’s late husband. I was not persuaded that such an act of transfer would on its own constitute substantial loss.
15. At any rate, it was clear that the Defendant had been required to execute the transfer documents within 14 days failure to which the Deputy Registrar of this Court was required to execute the same. The Defendant came to Court seeking stay some four (4) months late and it was not clear whether or not the Deputy Registrar of the Court had executed the documents as per the Court’s directive.
16. It follows that I am not persuaded that there was any basis for a grant of stay of execution as sought in Prayer No. 4 of the application. I did not however understand the Plaintiff to be objecting to the Defendant’s new Advocates coming on record as sought in Prayer No. 3 of the application.
17. Accordingly I allow the Defendant’s application only in terms of the said Prayer No. 3 of the application. The costs of this application shall be in the Appeal.

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

In the presence of:

Mr. Murungi for the Plaintiff

No appearance for the Defendant

Court assistant - Kendi



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**J. O. OLOLA**

**JUDGE**

