



**Nganga v Gatimu (Environment and Land Appeal E047 of 2024)
[2025] KEELC 3946 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3946 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E047 OF 2024**

MN GICHERU, J

MAY 20, 2025

BETWEEN

NJERI NGANGA APPELLANT

AND

KARANJA GATIMU RESPONDENT

RULING

1. This ruling is on the notice of motion dated 17-3-2025. The motion which is by the Appellant is brought under order 42 rule 1 of the Civil Procedure Rules and all other enabling provisions of law. The motion seeks the following orders.
 3. Stay of proceedings in Kigumo SPMCC ELC Case No. E016 of 2023 pending the hearing and determination of this appeal.
 4. Stay of execution of the judgment delivered on 7-11-2024 pending the hearing and determination of this appeal to preserve the subject matter of the dispute which is Loc.18/ Gachocho/2779 so that the right of the appellant who is exercising the right of appeal are safeguarded and the appeal is not rendered nugatory.
2. The motion is based on five(5) grounds and is supported by an affidavit sworn by the Applicant dated 17-3-2025. The gist of the grounds and the affidavit is as follows. The Appellant is dissatisfied with the judgment of the lower court delivered on 7/11/2024. Secondly, there is an appeal which has high chances of success. Thirdly, it is prudent to stay execution of the judgment pending the hearing and determination of this appeal. Fourthly, the Appellant is willing to provide security for the due performance of the decree if the appeal fails and they are not hell bent on undermining judicial time. Fifthly, the current motion has been brought without undue delay and will not prejudice the Respondent in any way. Sixthly, the Appellant may be evicted from the suit land and if this happens, she will be rendered destitute and the appeal will be rendered nugatory. Finally, the Appellant has annexed



(3) photographs showing a homestead with a number of houses. There is one house which is maroon and green in colour. It has a stone foundation and what appears to be a stone wall on the lower part. It is surrounded by other houses which do not seem to have a better foundation.

3. On 7-5-2025, the Respondent's counsel said that they have no plans of evicting the Appellant from the house described above.

In his replying affidavit dated 5-5-2025, the Respondent replies as follows. Firstly, the Appellants homestead is within LR No. Loc.18/Gachocho/2778 and not on LR No. 2779 and so there is no need for her to worry because there is no intention of evicting her from her land. Secondly, all that the Respondent wants is the grave dug on his land filled and a semi permanent structure belonging to the Appellant's on the Respondent's land demolished. Thirdly, this structure was purposely built on the Respondent's property to defeat previous court orders. Fourthly, the Appellant's land No. 2778 is exactly the same size as the Respondent's and big enough to accommodate her son's semi permanent structure and the grave hence no loss will be suffered if both of them are removed. Fifthly, the Appellant has failed to prove that she has an arguable appeal as this was a burial dispute and not a land ownership dispute. Sixthly, if there is any pending ownership dispute, the same can be determined in Kigumo Succession Cause No. 76 of 2011 which is coming up for hearing on 1-7-2025. Finally, the application has failed to meet the threshold in Order 42 rule 6(2) of the *Civil Procedure Rules* as appertains to the grant of an order of stay of execution. For the above and other reasons, the Respondent prays for the dismissal of the motion dated 17-3-2025.

4. I have carefully considered the motion dated 17-3-2025 in its entirety including the grounds, supporting affidavit, replying affidavits and annexures including the photographs. I find that the motion has no merit for the following reasons. Firstly, for an application for stay of execution to succeed, the Applicant must prove three(3) things. One, that she will suffer substantial loss if the order for stay is not allowed. Two, the application for stay has been made without unreasonable delay. Three, that security for the due performance of the decree has been given by the Applicant. All these conditions must exist for the order of stay to be made. If one of the conditions is not met, the application fails. This is because the conditions are conjunctive and not disjunctive. The word 'and' used twice in Order 42 rule 6 (2) (a) makes the three conditions conjunctive. Applying that test to this case, one finds that the Respondent does not intend to demolish the Appellants house built on her own land. All that he wants is the grave on his land filled up. If the grave is filled up, there will be no loss to the Appellant. Since she has her own land, she can bury her dead on her own land. The motion also fails the second ground of being filed on time. The judgment appealed against was delivered on 7-11-2024. The current application was filed on 17/3/2025. This is more than four(4) months after judgment. I find the delay unreasonable. Finally, the Appellant has not offered any security for the due performance of the decree. The court could impose conditions but only if the other two conditions mentioned above had been met. As is clear from the above findings, it is not necessary to impose any conditions.
5. Secondly, this court has been asked to stay the proceedings in Kigumo SPMCC ELC Case No. E016 of 2023. The case has been concluded and that is why there is this appeal. No reasons have been advanced for staying a concluded case. Reasons ought to have been given. For the above stated reasons, I find no merit in the motion dated 17-3-2025 and I dismiss it.

Costs in the cause.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 20TH DAY OF MAY, 2025.



M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant’s Counsel – Mr T.M. Njoroge

Respondent’s Counsel – Miss C. Karwitha

