



**Kariuki v Watatua & another (Miscellaneous Civil Application
E070 of 2023) [2024] KEHC 6915 (KLR) (10 June 2024) (Ruling)**

Neutral citation: [2024] KEHC 6915 (KLR)

**REPUBLIC OF KENYA
IN THE HIGH COURT AT NYERI
MISCELLANEOUS CIVIL APPLICATION E070 OF 2023**

DKN MAGARE, J

JUNE 10, 2024

BETWEEN

ANN GATHIGIA KARIUKI APPLICANT

AND

SERAH NJERI WATATUA 1ST RESPONDENT

EUNICE WANJIKU MWANGI 2ND RESPONDENT

RULING

1. This is an application dated 18/12/2023 for leave to appeal out of time. The Applicant was not party to the suit in the court below. The application for leave to execute sought an order against the Applicant.
2. At the time of issuance of the order, the suit land was registered in the Applicant's name. It is not known how the transfer occurred but there is a transfer. The question the court will deal with is an issue of Audi alteram partem. The Appeal is not idle. This is more so when the party against whom execution was sought was not heard.
3. The delay in the application is long. However, there is no evidence that the Applicant was served with the order, being a non party. Consequently, I find the application merited and allow the same. The Applicant shall file Memorandum of Appeal within 10 days of this order.
4. The court may not grant stay of the entire Decree as the dispute relates only to the sale of Land Parcel No. LR Nyeri/Waraza/1485. Consequently, there will be stay of execution limited only to Land Parcel No. LR Nyeri/Waraza/1485 pending hearing of the intended appeal.
5. Order 42 rule 6 requires that there be security for the appeal. Consequently, there is no better security than the title deed itself. I therefore direct that the original title deed be deposited in court by 3.30 pm on 10/7/2024, failing which stay shall lapse. Costs will be in the intended appeal.



Determination

6. The upshot of the foregoing is that I make the following orders:
- a. Leave be granted to the Applicant to file appeal out of time. The Memorandum of Appeal should be filed by 25/6/2024.
 - b. There be stay of sale of Land Parcel No. Nyeri/Waraza/1485 pending hearing and determination of the Appeal herein on condition that the original title deed be deposited in court by 10/7/2024 at 3.30 pm, failing which stay granted shall lapse.
 - c. For avoidance of doubt, there is no stay in regard to the remainder of the Decree in CMCC No. 42 of 2020. The Decree Holder can proceed with execution other than Land Parcel No. Nyeri/Waraza/1845.
 - d. Costs in the intended appeal.
 - e. This file is closed.

DELIVERED, DATED AND SIGNED AT NYERI ON THIS 10TH DAY OF JUNE, 2024.

KIZITO MAGARE

JUDGE

In the presence of:-

Mr. Ng'ang'a for the 1st Respondent

No appearance for the Applicant

Court Assistant – Jedidah

