



REPUBLIC OF KENYA



Kihara & 2 others v Kihara & 4 others (Environment & Land Case E014 of 2021) [2025] KEELC 4499 (KLR) (16 June 2025) (Ruling)

Neutral citation: [2025] KEELC 4499 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT & LAND CASE E014 OF 2021**

MN GICHERU, J

JUNE 16, 2025

BETWEEN

NAFTARI NDUMBI KIHARA 1ST PLAINTIFF

BEATRICE MUMBI KARIUKI 2ND PLAINTIFF

JACKSON NJUGUNA NDIRANGU 3RD PLAINTIFF

AND

NJUGUNA NJIHIA 1ST DEFENDANT

KAMAU NJIHIA 2ND DEFENDANT

NDIRANGU NJIHIA 3RD DEFENDANT

MWANGI NJIHIA 4TH DEFENDANT

MAINA NJIHIA 5TH DEFENDANT

RULING

1. This ruling is on the notice of motion dated 29-7-2024. The motion which is by the Defendants seeks the following residual orders.
 2. Leave be granted to John Mwariri, advocate of Kituo Cha Sheria to come on record for the Defendants.
 3. Stay of proceedings, judgment and decree herein pending the hearing and determination of the appeal by the Defendants.
 4. That the costs of this application be in the cause.
2. The motion which is brought under Sections A1, 1B, 3A and 63(e) of the *Civil Procedure Act*, Orders 42 rule 6 and rule 9 of the Civil Procedure Rules is based on Seven (7) grounds and is supported by



the affidavit of Francis Mwangi Njihia. The gist of the grounds and the affidavit is as follow. This court delivered a judgment on 4-7-2024 in which the Plaintiffs were the successful parties. Secondly, the Defendant, aggrieved by the decision of the court preferred an appeal. Thirdly, they stand to suffer substantial loss if the Respondents execute the decree as they have no other place to call home. Fourthly, If the order sought is not allowed, the appeal will be rendered nugatory and the Respondents have threatened to evict the Applicants. Finally, the Applicants depend on the suit land for their daily subsistence and they have also buried their parents on it. For the above and other reasons, they pray for the orders.

3. The motion is opposed by the Plaintiffs and the 1st Plaintiff has sworn a replying affidavit dated 21-9-2024 in which he replies as follows. One, the motion as drawn is grossly incompetent, mischievous, an abuse of the court process and the orders sought are not available. Two, the entire motion is premised on falsehoods and misrepresentation in that the Applicants have their own land known as Loc.2/ Makomboki/117 which is adjacent to the former Loc. 2/Makomboki/116 and they have been given sufficient time to vacate. Three, the, photographs exhibited by the Applicants cannot give them a right over another persons property. Four, the Applicants were not born and brought up on the suit land but on L.R. No. Makomboki/117. Five, the food crops growing on the Respondents cannot be the basis for an order of stay of execution since the same have been illegally planted on the land that does not belong to the Applicants. Six, the Applicant's parents are buried on L.R. No. 117, and not the suit land. Finally, sickness of the wife of one of the parties cannot be a basis for the continued occupation of the suit land by the Applicants.
4. In the written submissions, the Applicant's counsel has identified four issues for determination as follows.
 - a. Whether substantial loss may result to the Applicant unless the order is made.
 - b. Whether the application has been made without unreasonable delay.
 - c. Whether such security as the court orders for the due performance of such decree or order as may ultimately be binding on the Applicant has been given.
 - d. Whether the Applicants should prove that they have an arguable appeal.
5. I have carefully considered the motion dated 29-7-2024 in its entirety including the grounds, the supporting affidavit, the replying affidavit, the written submissions and the law cited therein.
I find that the Applicant's counsel has identified the issues correctly. He has however left out one issue of whether the incoming counsel for the Applicants should be allowed to come on record for the Defendants.
6. On the 1st issue, I find that the Applicants have not proved that they will suffer substantial loss if the motion is not allowed. The Applicants have their own land which is Loc.2/Makomboki/117 which measures 2.6. hectares or 6.42 acres. They cannot claim to have no other place to call home. They should move to their land. They have not been truthful in saying that they have no other placed to call home.
7. Regarding to the 2nd issue, I find that the motion has been filed timeously because judgment was on 4-7-2024 and the motion was filed on 29-7-2024 which is within the timeline set in Section 79G of the *Civil Procedure Act*.
8. Regarding security for the due performance of the decree, the Applicants have vide paragraph 15 of the affidavit dated 29-7-2024, asked the court to consider their modest means as they are grandparents and their children are not financially stable. This means that even as the Applicants continue to litigate, they



cannot give adequate security for the due performance of the decree that they may be finally binding upon them. Yet the three conditions in Order 42 rule 6(2) of the Civil Procedure Rules are conjunctive. This means that an order of stay of execution will not be made unless all the three are satisfied. The Applicants have only satisfied one of the three conditions.

Finally on leave to come on record after judgment, I find that the application has been served on the outgoing counsel for the Defendant and it is not opposed. That prayer is therefore allowed.

9. For the foregoing reasons motion dated 29-7-2024 is allowed in terms of prayer 2 only and the prayer for stay of execution is dismissed.

Costs to the Respondents.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 16TH DAY OF JUNE, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mr. Malanga

Defendant's Counsel – Mr. Mwariri

