



REPUBLIC OF KENYA



**Kenya Agricultural Research Institute (KARI) v Ali, Chairman Isahakia Self Help Group
(Sued on his behalf and on behalf of members of the Group) & another (Environment
& Land Case 103 of 2019) [2025] KEELC 39 (KLR) (21 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 39 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 103 OF 2019
MAO ODENY, J
JANUARY 21, 2025
(FORMERLY NAKURU HCCC NO 23 OF 2011)**

BETWEEN

KENYA AGRICULTURAL RESEARCH INSTITUTE (KARI) PLAINTIFF

AND

**FARAH ALI, CHAIRMAN ISAHAKIA SELF HELP GROUP (SUED ON HIS
BEHALF AND ON BEHALF OF MEMBERS OF THE GROUP) . 1ST DEFENDANT**

COMMISSIONER OF LANDS 2ND DEFENDANT

RULING

1. This ruling is in respect of a Notice of Motion dated 3rd September, 2024 seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That the Court be pleased to grant a stay of execution of the Judgment given by the trial court on 27th June, 2024 and/or any consequential decree or order in Nakuru ELC 103 OF 2019 pending the hearing and determination of the intended appeal against the Judgment.
 - d. That the costs of this application be provided for.
2. The application was supported by the affidavit of Farah Ali Ahmed, the 1st Defendant/Applicant sworn on 3rd September, 2024 who deponed that he is the chairperson and convener of the 1st Defendant/Applicant and that they have an arguable appeal hence the quest for an order of stay pending appeal. It was his case that there has been no delay in filing this application and pray for the orders of stay of execution.



3. The Director General of the Plaintiff/Respondent, Dr. Eliud Kireger, filed a Replying Affidavit sworn on 11th October, 2024 and deponed that the 1st Defendant shall not suffer any irreparable harm if the orders of stay are not granted as the application is an abuse of the Court process. He deponed that the 1st Defendant has filed a similar application seeking stay of execution pending Appeal before the Court of Appeal Nakuru COAAPPL NO. E071 of 2024 and one cannot file similar applications before two different courts. He deponed that this case is peculiar since there was no evidence challenging the Plaintiff's case.
4. The Respondent further deponed that the Applicant has not annexed the Notice of Appeal to the Application and that it is a ploy to delay the Plaintiffs' opportunity to enjoy the fruits of its judgment noting that the Plaintiffs have been in this court since 2011, almost 13 years seeking justice.
5. It was the Respondent's case that the value of the land stands at Ksh 352,398/ per acre and it is a total of 535 Hectares hence the 1st Defendants should deposit in an interest earning account the total sum of the land being Kshs 174,185,362/ as security for costs for the Appeal.

1ST DEFENDANT/APPLICANT'S SUBMISSIONS

6. Counsel for the 1st Defendant/Applicant filed submissions dated 26th November, 2024 and identified the issues for determination as:
 - a. Whether a stay of execution should be granted pending the intended appeal.
 - b. Whether the Applicant has an arguable appeal with a higher chance of success.
 - c. Whether the intended appeal will be rendered nugatory if the order of stay is not granted.
7. On the first issue, counsel submitted that the Applicant has an arguable appeal. As the Applicant's eviction together with his family and over 5,000 members of the self-help group has caused the Applicant loss and damage which will render the Applicants destitute and the same may render the preferred Appeal nugatory. Counsel relied on the cases of *RWW vs EKW* [2019] eKLR and *Multimedia University & another vs Gitile N. Naituli* [2014] eKLR.
8. On the second issue, counsel submitted that the Applicant filed the draft Memorandum of Appeal which contains grounds of appeal and relied on the cases of *Damji Pragji Mandavia vs Sara Lee Household & Body Care (K) Ltd*, Civil Application No Nai 345 of 2004 and [*Joseph Gitahi Gachau & Another vs Pioneer Holdings \(A\) Ltd & Two others*](#), Civil Application No 124 of 2008.
9. On the third issue, counsel submitted that unless the orders sought are not granted, the appeal would be rendered nugatory as the prospect of being forcibly removed from the suit land and having his home and personal belongings taken away from him is a source of great distress to him and his family. Counsel relied on the case of [*Reliance Bank Limited vs Norlake Investments Limited*](#) [2002] 1 E. A 227 and urged the Court to allow the application.

PLAINTIFF/RESPONDENT'S SUBMISSIONS

10. Counsel for the Plaintiff/Respondent filed submissions dated 22nd November, 2024 and identified the issues for determination as:
 - a. Whether the conditions for grant of an order of stay (justifiable cause, irreparable harm & security for performance of the decree have been satisfied)?
 - b. Whether it is in the interests of justice for the order of stay to be granted?



11. Counsel relied on Order 42, Rule 6 of the Civil Procedure Rules and the case of *Butt vs Rent Restriction Tribunal* [1979] eKLR and submitted that the application before court has been overtaken by events as the orders sought cannot be granted as there is nothing to stay given the execution of the judgment had already been carried out on 30th August 2024 and the Defendants are no longer in the suit property. Counsel relied on the case of *George Ole Sangui & 12 others vs Kedong Ranch Limited* [2015] eKLR.
12. Counsel further submitted that the Applicant has not identified any harm they will suffer and that despite having unlawfully acquired title to the suit property, the Applicant has never possessed the property. Counsel submitted that the status quo favors the Plaintiff who has always been in possession of their parcel since 2005.
13. According to counsel, there is nothing in this matter that cannot be quantified in monetary terms and there is no evidence of any special investment or social asset that would convince the court of this legal requirement and relied on the cases of *Charles Mwangi Kiiru vs Boniface Maina Gichomo & Joseph Mwangi Thuo* [2021] eKLR, *Zipporah Karigu & 5 others vs Sabera Gakundi Mwithi & 10 others* [2021] eKLR, *Monica Opete vs Michael Owino Awinde* [2021] eKLR, *Kampali Ole Kiok vs Simon H. Igecha Waitbaka* [2021] eKLR, *Njeri Munene vs Wilfred Muriuki Muriithi* [2015] eKLR, *Sammy Muthengi Kite vs Veronica Mutola Kalusi* [2021] eKLR, *Re Estate of Atanasio Karanu* [2018] eKLR, *James Wangalwa & another vs Agnes Naliaka Cheseto* [2012] eKLR, *Machira t/a Machira & Co Advocates vs East African Standard* [2002] eKLR and *Pamela Monyangi Bitange & 2 others vs David Kasyaku & 4 others* [2021] eKLR.
14. On the issue of security, counsel submitted that the Applicant has not offered any therefore the application must fail with costs awarded to the Plaintiff and relied on the cases of *Equity Bank Limited vs Taiga Adams Company Limited* [2006] eKLR and *Congress Rental South Africa vs Kenyatta International Convention Centre; Co-operative Bank of Kenya Limited & another (Garnishee)* [2019] eKLR.
15. Lastly, counsel submitted that the Plaintiff's case was largely unchallenged and urged the court to dismiss the application with costs to the Respondent.

ANALYSIS AND DETERMINATION

16. The issue for determination is whether the Applicant has met the conditions set out under Order 42 Rule 6 for the grant of stay of execution pending the hearing of an intended appeal.
17. For the court to grant an order of stay of execution, an Applicant must demonstrate that he/she filed the application without undue delay that will suffer substantial loss if the orders sought are not granted and is willing to offer security for the due performance of the decree.
18. On whether the application was filed without unreasonable delay, the judgment in this case was delivered on 27th June, 2024 while the application under consideration is dated 3rd September, 2024. This shows that the application was filed timeously. In the case of *Jaber Mohsen Ali & another v Priscillah Boit & another* [2014] the court held as follows:

“The question that arises is whether this application has been filed after unreasonable delay. What is unreasonable delay is dependent on the surrounding circumstances of each case. Even one day after judgment could be unreasonable delay depending on the judgment of the court and any order given thereafter.”



19. The second limb of the prerequisites for the grant of an order of stay of execution is that the Applicant must demonstrate that unless the court grants the order, he/she stands to suffer substantial loss.
20. The Plaintiff's counsel submitted that the orders sought cannot be granted as there is nothing to stay as the execution had already been carried out on 30th August 2024 and the Defendants are no longer in the suit property. The court notes that this assertion has not been controverted by the Applicant by filing any evidence in that respect.
21. In the case of *Elijah Kimani Kimuyu & 2 Others v Francis Mburu Kamau* [2021] eKLR, the Court held that:

“We have anxiously considered the application. The assertion by the respondent that the decree has already been executed is not controverted, meaning that the application for stay of execution has been overtaken by events.”
22. It would be an academic exercise to issue orders in vain when the court is aware that they will not serve any purpose. Similarly, in the case of *Wang'ombe v Nyamu* (Environment & Land Case 48 of 2017) [2023] KEELC 366 (KLR) (26 January 2023) (Ruling), the court held as follows:

“It would, therefore, follow that the decree sought to be stayed having been long executed, there is really nothing to be stayed. The court agrees with the plaintiff's submission that the instant application has been overtaken by events hence untenable.”
23. The assertion by the applicant that they will suffer substantial loss and the execution has already taken place may not be considered after the fact. It is also on record that the Applicant is using two parallel forums to seek orders for a stay of execution. The Applicant has not addressed the court on counsel's submission that they had filed a similar application at the Court of Appeal.
24. I have considered the application, the submission by counsel and agree with the Plaintiff's counsel that the application has been overtaken by events hence there is nothing to stay as the execution of the judgment has already been carried out and the Defendants are no longer on the suit property. Consequently, the application dated September 3, 2024 is hereby dismissed. Each party shall bear their own costs.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 21ST DAY OF JANUARY 2025.

M. A. ODENY

JUDGE

