



**Wainaina v Gachuri & another (Environment and Land Case
20 of 2017) [2025] KEELC 7225 (KLR) (1 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7225 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU
ENVIRONMENT AND LAND CASE 20 OF 2017
LN MBUGUA, J
OCTOBER 1, 2025**

BETWEEN

HENRY MWANGI WAINAINA PLAINTIFF

AND

STEPHEN KIMANI GACHURI 1ST DEFENDANT

STEPHEN NGIGI KIMANI 2ND DEFENDANT

RULING

1. Before me is a notice of motion application dated 28.2.2025 in which the 1st defendant/applicant seeks the following orders; That the orders committing him to civil jail dated 20.1.2025 be reviewed and set aside and he be released on execution of a personal bond, that he be allowed to make a monthly deposit of Kshs. 500 in a joint interest account until payment in full and/or conclusion of Nakuru Appeal No. 20 of 2020.
2. The application is premised on grounds on the face of the application and in his supporting affidavit. He avers that he was committed to civil jail for 30 days on 20.1.2025, yet he had not been served with a notice to show cause on why warrants of arrest should not be issued. He avers that he is a destitute old man of 71 years and he now stands to be prejudiced if execution is carried out.
3. There seems to be no response filed thereof. However, on 17.7.2025, counsel for the plaintiff informed the court that the application has been overtaken by events as the 2nd defendant was released from civil jail by the Court of Appeal.
4. I find that judgment was delivered herein way back on 17.12.2019 in which the defendants were directed to vacate the suit premises within 60 days and they were to pay general damages for trespass to the tune of Kshs. 100 000.



5. The defendants filed an application dated 15.6.2021 for stay of execution of the said judgment which application was dismissed on 28.4.2022. The defendants filed another similar application dated 23.1.2025 which was dismissed vide the court's ruling of 10.2.2025. On the said date of 10.2.2025, counsel for the plaintiff informed the court that a similar application had also been filed at the Court of Appeal. That averment was not rebutted by the applicant.
6. I therefore find that the orders sought in the current application are meant to vary the orders given previously by this same court on matters of stay of execution. The application amounts to an abuse of court processes and the same is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NYAHURURU THIS 1ST DAY OF OCTOBER 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE.

In the presence of:

Vanessa CA

Wambui Nganga for the plaintiff

Stephen Kimani Gachuri 1st defendant in person

Stephen Ngigi Kimani 2nd defendant in person

