



**Kungu v Kungu (Environment and Land Case 11 of 2023)
[2025] KEELC 5617 (KLR) (29 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5617 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND CASE 11 OF 2023**

**MN GICHERU, J
JULY 29, 2025**

BETWEEN

SAMUEL NDUNGU KUNGU PLAINTIFF

AND

VERONICA WAITHERA KUNGU DEFENDANT

RULING

1. This ruling is on the notice of motion dated 27-3-2025. The motion which is by the Defendant is brought under Sections 1A, 1B, 3A of the Civil Procedure Act, Order 22 and rule 22, Order 42 and Order 51 rule I of the Civil Procedure Rules and Article 159(2) (d) of the Constitution and all other enabling rules, regulations and provisions of the law. The motion seeks the following residual orders.
 3. Stay of execution of the ruling dated 18-3-2025 and all consequential orders thereto pending the hearing and determination of the intended appeal by the Applicant.
 4. The costs of this application be in the cause.
2. The motion is based on nine(9) grounds and is supported by an affidavit dated 20-3-2025 which has two(2) annexures. The gist of the motion is as follows. Firstly, the Defendant is dissatisfied with the ruling dated 18-3-2025 and she stands to be evicted from the suit land within 60 days. Secondly, she has filed a notice of appeal. Thirdly, the court is under a duty to preserve the subject matter until the pending appeal is heard and determined. Fourthly, the Defendant is 80 years old and ailing and in the event she is evicted, she will suffer irreparable loss. Fifthly, she has no other place to call home and since the appeal has high chances of success, the motion should be allowed.
3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 4-4-2025 in which he replies as follows. One, the Applicant claims to be the absolute owner of the suit land in paragraph 2 of her affidavit yet this is not the case because all she has in the land is a life interest. Two, the Defendant has twisted the order of the Court to make it seem like she is being evicted when this is not the case.



Three, this court did not make any decision on the ownership of the suitland. All that the court did was to order the implementation of the decree so that there is finality in the matter. Four, the Court did not order the demolition of the house where the Defendant resides but the demolition of the houses built afterwards. Five, this application is only meant to delay the implementation of the decree as it is clear even from the report of the Deputy Registrar that she does not reside on the suit land.

For the above and other reasons, the Plaintiff prays for the dismissal of the motion dated 27-3-2025.

4. I have carefully considered the motion in its entirety including the affidavits, the annexures and the written submissions by the learned counsel for the parties. I find that the motion has no merit for the following reasons.
5. Firstly, the Defendant is not being evicted from the suit land. It is only the house built in breach of the court order that is to be demolished. The ruling of 18-3-2025 is very clear on this at Paragraph 10 thereof. If there is any appeal to the effect that the Defendant is being evicted from the suit land, then the appeal is based on falsehood. There is no such order anywhere in this record.
6. Secondly, an appeal based falsehood cannot succeed. Only a well grounded appeal based on credible and cogent grounds and facts can withstand the scrutiny of the law. I do not believe that the intended appeal is based on the correct facts. The truth remains that the Defendant's house is not to be demolished.
7. Finally, under Order 42 rule 6(2) *Civil Procedure Rules*, no order of stay of execution shall be allowed unless the Applicant satisfies three conditions all together. The first condition is that the Applicant must prove that he will suffer substantial loss if the application is not allowed. The second is that the application has been made without unreasonable delay and the third is that such security as the court may order for the due performance of the decree has been given by the Applicant.
8. Looking at the first ground, it is obvious that the Applicant will not suffer any loss because her old house is intact. It will not be demolished. She will also not be evicted from the suit land. The motion meets the second condition because it was filed on 27-3-2025 which is less than 10 days after the ruling of 18-3-2025. Thirdly, on this point, the motion fails the third condition because its sole aim is to frustrate the decrees in Thika Succession Cause No. 431 of 2009 and the one of this court dated 24-11-2026. Since all the three conditions must be satisfied in order to have a motion such as the current one allowed, I find that it fails the test.
9. For the above stated reasons, I find no merit in the motion dated 27-3-2025 and I dismiss it with costs to the Plaintiff.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 29TH DAY OF JULY, 2025.

M.N. GICHERU

JUDGE.

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Plaintiff's Counsel – Mrs Mangua

Defendant's Counsel – Mr Wachira

