



**Njoroge v Maina (Environment and Land Appeal E042 of 2023)  
[2024] KEELC 403 (KLR) (29 January 2024) (Judgment)**

Neutral citation: [2024] KEELC 403 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E042 OF 2023**

**BM EBOSO, J  
JANUARY 29, 2024**

**BETWEEN**

**MONICA MUTHONI NJOROGE ..... APPELLANT**

**AND**

**MARY NDUTA MAINA ..... RESPONDENT**

**JUDGMENT**

1. Falling for determination in this ruling is the appellant’s application dated 21/8/2023, through which she seeks an order of stay of execution of the decree in Kiambu CMC Civil Case No 316 of 2015. The application is premised on the grounds set out in the motion and is supported with the appellant’s affidavit sworn on 21/8/2023 and further affidavit sworn on 16/10/2023. It was canvassed through written submissions dated 16/10/2023.
2. The case of the appellant is that the trial court decreed his eviction from land parcel number Gitamaiyu/Kagwe/1910, and being dissatisfied with the Judgment of the trial court, he brought this appeal. He contends that he stands to suffer substantial loss should the eviction be carried out while this appeal is pending disposal by this court. It is his case that he has a home on the suit property.
3. The respondent opposes the application through a replying affidavit dated 8/10/2023; grounds of opposition of even date and written submissions dated 14th November 2023. The case of the respondent is that the appellant was given a stay of 120 days in the trial court but chose to wait until the last minute before bringing this application. She contends that the Judgment of the trial court has been stayed by a court of concurrent (sic) jurisdiction in Githunguri SPMC Succession Cause No 122 of 1997, hence there is no need for another stay order. She adds that the suit land has been subdivided in implementation of orders of the High Court.
4. I have considered the application, the response to the application, and the submissions tendered. I have also considered the relevant legal frameworks and jurisprudence. The single question to be answered



in this ruling is whether the application satisfied the criteria for grant of an order of stay of execution pending appeal.

5. The framework which guides this court when exercising jurisdiction to grant orders of stay of execution pending appeal is set out in Order 42 rule 6(2) of the Civil Procedure Rules which provides as follows:

“No order for stay of execution shall be made under sub-rule (1) unless-

- a. The court is satisfied that substantial loss may result to the applicant unless the order is made and the application has been made without unreasonable delay; and
- b. Such security as the court orders for due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”

6. In the application under consideration, the appellant has indicated that he has a home on the suit property and that should the decree of the lower court be enforced while this appeal is still pending, she will suffer substantial loss. The above contention has not been controverted.

7. Secondly, perusal of this file reveals that this appeal is scheduled for hearing on 13/2/2024. It is also noted from the file that on 4/12/2023, parties were directed to file and serve written submissions. There is therefore a likelihood that this appeal will be disposed in under six months. Taking all the above into account, the court takes the view that an order of stay of execution for a period not exceeding 6 months will serve the ends of justice.

8. Consequently, the notice of motion dated 21/8/2023 is disposed in the following terms:

- a. There shall be an order of stay of execution in Kiambu CMC Civil Case No 316 of 2015 for a period not exceeding six months from today.
- b. Costs of the application shall be in the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA ON THIS 29TH DAY OF JANUARY 2024.**

**B M EBOSO**

**JUDGE**

In the presence of:-

Mr. Siagi for the Respondent

No appearance for the Appellant

Court Assistant: Osodo/Hinga

