



REPUBLIC OF KENYA



**Muchiri & 4 others v Mugane & 2 others (Civil Suit E001 of 2021)  
[2024] KEELC 185 (KLR) (25 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 185 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAKURU  
CIVIL SUIT E001 OF 2021  
A OMBWAYO, J  
JANUARY 25, 2024**

**BETWEEN**

**DUNCAN GITHAIGA MUCHIRI ..... 1<sup>ST</sup> APPLICANT  
BENSON WAMBUGU MUCHIRI ..... 2<sup>ND</sup> APPLICANT  
REUBEN MACHARIA MUCHIRI ..... 3<sup>RD</sup> APPLICANT  
JOSEPH NDIRANGU MUCHIRI ..... 4<sup>TH</sup> APPLICANT  
PETER KARIUKI MUCHIRI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**CHARLES NJUGUNA MUGANE ..... 1<sup>ST</sup> RESPONDENT  
MARGARET NGENDO GATUNE ..... 2<sup>ND</sup> RESPONDENT  
BISHOP JAMES GICHURU ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. Charles Njuguna Mugane, Margaret Ngendo Gatune and Bishop James Gichuru have come to court seeking orders that this court be pleased to issue an order of stay of execution or implementation of the judgment delivered on 22<sup>nd</sup> September 2023 pending hearing and determination of the appeal against the said judgment in the Court of Appeal. The applicants pray that costs be provided for.
2. The application is based on grounds that the Defendants/ Applicants have already preferred an Appeal in the Court of Appeal against this Honorable Court's Judgement delivered on 29<sup>th</sup> September 2023. There exists a possibility of execution of the terms of the Judgement by the Plaintiffs in the absence of a stay of execution order, which shall render the Appeal in the Court of Appeal an academic exercise.
3. The Plaintiffs' and Defendants' late fathers are the joint registered proprietors of the subject parcel of land but this Court made a finding that the Plaintiffs were entitled to registration of the whole



land as adverse possessors thereof. The Court ordered that the Deputy Registrar may proceed to sign all such documents as may be necessary to transfer the whole parcel of land to the Plaintiffs. The 30 day's stay period granted on 22<sup>nd</sup> September 2023 have since expired and in order for the *status quo* to be maintained it is only fair and just that the orders sought be granted. The Applicants cannot be accused of any inordinate delay in lodging this application. The Applicants are ready to abide by all such conditions as the Court shall deem appropriate.

4. In the supporting affidavit the 2<sup>nd</sup> applicant states that she has the authority of her Co -Defendants/ Co-Applicants to swear this Affidavit on her own behalf and on their behalf.
5. That Judgment in this case was pronounced on 22<sup>nd</sup> September 2023 where the Plaintiffs were found to be entitled to land parcel L.R.No. 519/184 by way of adverse possession. The Plaintiffs' late father and the Defendants' late fathers were the joint registered proprietors of this land where they and the Plaintiffs were born and brought up by their respective late parents.
6. They reside and eke their living in this parcel of land and they are very apprehensive that the Plaintiffs-now adverse possessors of their own late father's land shall implement and execute the terms of the Judgment delivered on 22<sup>nd</sup> September 2023.
7. On 22<sup>nd</sup> September 2023, the Court granted them a temporary stay of execution for 30 days in order to allow them internalize the terms of the Judgment and take such other legal options as they may deem fit.
8. They timeously filed and served a Notice of Appeal on 27<sup>th</sup> September 2023. They wrote a letter requesting proceedings dated 25<sup>th</sup> September 2023 whose copy was served on 28<sup>th</sup> September 2023 upon counsel for the Plaintiffs. That the necessary fees for obtaining the typed proceedings was promptly paid on 26<sup>th</sup> September 2023. That the fees payable on filing the Notice of Appeal was also paid on 26<sup>th</sup> September 2023. The Application for stay of execution could not be made when there was already an existing stay order from 22<sup>nd</sup> September 2023.
9. As at now there is nothing that can stop the Plaintiffs from executing or implementing the terms of the Judgment unless a stay order is granted If the Plaintiffs execute or implement the terms of the Judgment delivered on 22<sup>nd</sup> September 2023, they shall be highly prejudiced and their Appeal to the court of Appeal shall be rendered an academic exercise.
10. If the terms of the Judgment are implemented and executed, they shall be rendered destitute with nowhere to reside or eke our living from. They shall definitely suffer substantial loss. They believe that in order to preserve the existing *status quo* ante Judgment, it is only fair that this Application be granted. The Applicants undertake to abide by all such conditions as the court shall deem fair and just to impose.
11. I have considered the application without any reply filed by the respondents. The principles guiding the grant of a stay of execution pending appeal are well settled.
12. These principles are provided for under Order 42 rule 6(2) of the [Civil Procedure Rules](#) which provides:  

“No order for stay of execution shall be made under subrule (1) unless—

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



13. I do find that the application has been filed timeously without inordinate delay.
14. As to what substantial loss is, it was observed in *James Wangalwa & another v Agnes Naliaka Cheseto* [2012] eKLR, that:

“No doubt, in law, the fact that the process of execution has been put in motion, or is likely to be put in motion, by itself, does not amount to substantial loss. Even when execution has been levied and completed, that is to say, the attached properties have been sold, as is the case here, does not in itself amount to substantial loss under Order 42 Rule 6 of the CPR. This is so because execution is a lawful process. The applicant must establish other factors which show that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal ... the issue of substantial loss is the cornerstone of both jurisdictions. Substantial loss is what has to be prevented by preserving the status quo because such loss would render the appeal nugatory.”

15. I do find that the element of substantial loss has been proved as the applicants are likely to lose ownership of the property a state of affairs that can be described as substantial loss. I do grant stay on condition that the title deed for the property be deposited in court for safe keep and that the taxed costs be deposited in the joint account to be opened in a reputable bank in the names of the advocates for the parties. Ultimately, I do grant a stay of execution pending appeal. Cost in the appeal.

**RULING DATED, SIGNED AND DELIVERED THIS 25<sup>TH</sup> DAY OF JANUARY 2024**

**A. O. OMBWAYO**

**JUDGE**

