



Githinji v Constituency Development Fund Board & another (Environment & Land Case 8 of 2015) [2024] KEELC 742 (KLR) (15 February 2024) (Ruling)

Neutral citation: [2024] KEELC 742 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 8 OF 2015
LN MBUGUA, J
FEBRUARY 15, 2024**

BETWEEN

MARY WANJIKU GITHINJI PLAINTIFF

AND

CONSTITUENCY DEVELOPMENT FUND BOARD 1ST DEFENDANT

**DAGORETTI SOUTH CONSTITUENCY DEVELOPMENT FUND
COMMITTEE (FORMERLY DAGORETTI CONSTITUENCY DEVELOPMENT
FUND COMMITTEE) 2ND DEFENDANT**

RULING

1. Judgment herein was entered for the plaintiff against the defendants on November 3, 2017 in which the defendants were to pay to the plaintiff Ksh. 12 000 000 and Ksh 7 000 000 for the value of the property and damages amongst other orders.
2. What is before this court is the 1st defendant's application dated November 30, 2023 seeking a stay of execution of the aforementioned judgment pending the hearing and determination of their application in E114 of 2021 filed at the Court of Appeal.
3. The 1st defendants contend that they were aggrieved by the judgment of this court of which they lodged an appeal being Case no. 18 of 2018 at the Court of Appeal. That they filed a consent with the plaintiff for stay of execution of the judgment pending the determination of that appeal. However, the plaintiff apparently died on 28.4.2019 but this information was not disclosed to them, hence the appeal abated.
4. The 1st defendants aver that they are in the process of having the appeal revived vide the application made in E114 of 2021. However, the current plaintiff has commenced the process of execution through judicial review proceedings.



5. The plaintiff opposes the application vide her Replying Affidavit dated December 4, 2023 averring that the 1st defendant had filed an application for stay of execution pending appeal before this court, and the same was compromised via a consent. Thereafter, the initial plaintiff passed on, and was substituted with full knowledge of the defendants. That the new plaintiff had filed garnishee proceedings on December 1, 2020 prompting the current 1st defendant to file an application for stay of execution and substitution in the Court of Appeal, but the application for stay was dismissed.
6. I have considered all the arguments raised herein. I have also keenly perused the ruling delivered by the Court of Appeal on October 8, 2021 (availed by the plaintiff), where the current applicant was seeking a stay of execution of the judgment of this court. In that ruling, the Court of Appeal found that no notice of appeal was ever filed and proceeded to dismiss the application for stay.
7. That being the case, how then can this court embark on interrogating the merits of whether an order of stay is merited?. As rightly argued by the plaintiff, this court is functus officio in the dispute, save on matters relating to the implementation of its judgment, See *Brian Muchiri Waibenyia v Jubilee Hauliers Ltd & another; Geminia Insurance Co. Ltd (Interested Party)* [2018] eKLR. A court is functus when it has performed all its duties in a particular case as was stated in the case of *Shollei v Judicial Service Commission & another* (Application 10 (E016) of 2022) [2023] KESC 8 (KLR) (Civ) (17 February 2023) (Ruling).
8. And in this case, the court has done all that it was required to do. The fact that the appeal has abated, or that it is in the process of being revived at the Court of Appeal are issues in the realm of that particular court. To this end, I find that the application dated November 30, 2023 was dead on arrival, the same is hereby dismissed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 15TH DAY OF FEBRUARY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Ochieng for Plaintiff

M/s Njeri holding brief for M/s Kiugu for defendant

Ngei for 2nd Defendant

Court assistant: Eddel

