



Kaguri & another (Suing on behalf of the Estate of Nahashon M'Ikiamba M'Mpango) v M'Rukwaru & another (Environment and Land Appeal E30 of 2022) [2024] KEELC 1774 (KLR) (20 March 2024) (Ruling)

Neutral citation: [2024] KEELC 1774 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E30 OF 2022
CK NZILI, J
MARCH 20, 2024**

BETWEEN

ROSALIA KAGURI AND CHARITY MAKENA (SUING ON BEHALF OF THE ESTATE OF NAHASHON M'IKIAMBAM'MPANGO) APPELLANT

AND

MWITI M'RUKWARU 1ST RESPONDENT

GODFREY MUTHEE MWITI 2ND RESPONDENT

RULING

1. The court is asked to stay the execution of the judgment and orders issued on 22.11.2023 pending a hearing and determination of the intended appeal. The reasons are contained on the face of the application and in a supporting affidavit sworn by Godfrey Muthee Mwiti on 18.12.2023. Briefly, the applicants aver they are aggrieved by the said judgment, whose effect is to revert the suit land to the names of the deceased, which shall reduce them to being landless or squatters, yet they have always been and are still in occupation.
2. The applicants averred that they risk eviction from the land that they have exclusively occupied for over 30 years. Additionally, the applicants aver they have a homestead connected with electricity and water where they reside and have planted crops now at the risk of damages or destruction. The applicants also aver that unless a stay is granted, they stand to suffer substantial losses as alluded to above; otherwise, the application is made in good faith without unreasonable delay and in the interest of justice with no likelihood of prejudicing the respondent.
3. The application is opposed through a replying affidavit sworn by Rosalia Kaguri and Charity Makena on 16.1.2024, for lack of merits. It is averred that neither the applicant nor their family reside on the suit land, for they vacated the land after the lower court pronounced the judgment, moved to Isiolo



- Town, and have since been looking for potential buyers of the land to dispose of it, to the detriment of the estate of the deceased. Therefore, the respondents aver no prejudice is likely to be suffered by the applicants, more so when the effect of the decree was or the land to revert to the name of a deceased person and not the respondents.
4. The respondents aver that since the land will not revert into their names, the applicants retain a right to claim the land during the succession proceedings; hence, they are not likely to interfere with the applicant's occupation as long as the other beneficiaries are accommodated in the land that they have been denied access to or a share over the years.
 5. The respondent avers the applicants have not indicated if their alleged developments cover the entire 14.80 acres since there are other beneficiaries on the land for the applicants only occupying an acre of the entire land which they do not intend to interfere with, in good faith.
 6. Further, the respondents aver the applicants have not annexed evidence of the alleged developments on the land or particularized the harm or damage likely to be suffered if the land reverts to the name of the deceased, pending succession proceedings. In the event the stay orders are granted, the respondents aver the title deed held by the applicants should be inhibited so that the applicants do not sell or subdivide the land.
 7. The applicants are seeking a stay of execution pending a hearing and determination in the intended appeal pursuant to a notice of appeal filed on 29.11.2023. The effect of the decree issued on 7.12.2023 is that the L.R No. Ruiru/Rwarera/4257 and 4258 revert to the name of Nahashon M'Kiambati M'Mpango to be dealt with in accordance with the *Law of Succession Act*. The applicants have averred that the effect of the decree was that their investment on the site also risks demolition and eviction. They aver that they will be rendered homeless and squatters from the land they have extensively developed and occupied for over 30 years.
 8. The purpose of stay is to preserve the subject matter of appeal from preservable changes whose effect is to render the appeal nugatory if that substratum dissipates. In *James Wangalwa & another v Agnes Cheseto Naliaka* [2012] eKLR, the court said an applicant must show other factors that the execution will create a state of affairs that will irreparably affect or negate the essential core of the applicant as a successful party in the appeal and that substantial loss was what has to be prevented by preserving the status quo because such a loss would render the appeal nugatory.
 9. In *R.WW v EKW* [2019] eKLR, the court said the purpose of stay orders is to preserve the subject matter so that the rights of the appellant, who is exercising an undoubted right of appeal, are safeguarded and, if the appeal is successful, is not rendered nugatory but in doing so the right of the successful litigant who should not be deprived of the fruits of his judgment should be weighed to avoid any prejudice that cannot be compensated by way of costs.
 10. In the decree of this court, there was no order for eviction, vacant possession, or a declaration that the suit lands belonged to the respondents. All that the court decreed was for the title deeds to stand canceled and the land to revert to its original status in the name of the deceased, to be dealt with in accordance with the *Law of Succession Act*. Therefore, what the applicants have averred as amounting to substantial loss, irreparable loss and damage is not covered or contained in the decree issued by this court. Eviction is a legal process.
 11. The applicants have not attached any notice of eviction served upon them by the respondents. The alleged apprehension or fear of eviction or destruction is not substantiated with cogent and tangible evidence. It is the applicants who possess the title deed for the impugned parcels of land. They have not offered to surrender the same to the court as a conditioning precedent. They have not even mentioned



if they are willing to offer any security as to costs. No undertaking has been made as to the preservation of the status of the title deed held by the pending the intended appeal. See *Butt v Rent Restriction Tribunal* [1982] KLR 417, *Vishram Ravji Halai v Thorton & Turpin* [1990] KLR 365, *Gianfranco Manenthi & another v Africa Merchant Assurance Company* [2019] eKLR and *Arun C. Sharma v Ashana Raikundlaia t/a* [2014] eKLR.

12. Sufficient cause must be shown why the discretionary stay orders ought to be issued in favor of the applicants, to the detriment of the respondents, who have an undoubted right to enjoy the fruits of their litigation. In *Absalom Dova v Turbo Transporters* [2013] eKLR, the court said stay pending appeal is designed such that no one would be worse off by virtue of an order of the court as such that the order does not introduce a disadvantage but administers the justice that the case deserves, in recognition that both parties have rights.
13. The registration of the suit land in the name of the deceased is not favorable to any party but all the beneficiaries of the estate, the applicants included. In *Nkama Group Ranch & others v Nakaya* (Civil Application No. E416 of 2020) [2022] KECA 98 (KLR) 4th February 2022) (Ruling) the court on nugatory aspect cited *Reliance Bank Ltd v Norlake Investments Ltd* [2002] E.A 227 that the conflicting claim of both sides must be considered, including the proportion of suffering the respondents might undergo while waiting for the applicant's appeal to be heard and determined. Looking at the totality of the circumstances in this application, I find no merits in it. The same is dismissed with costs.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU
ON THIS 20th DAY OF MARCH, 2024**

In presence of

C.A Kananu

No Appearance

HON. C K NZILI

JUDGE

