



**Murang’a Road Motor Mart Limited v Registrar & 8 others (Civil Application E360 of 2023) [2024] KECA 980 (KLR) (26 July 2024) (Ruling)**

Neutral citation: [2024] KECA 980 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E360 OF 2023  
A ALI-ARONI, LA ACHODE & PM GACHOKA, JJA  
JULY 26, 2024**

**BETWEEN**

**MURANG’A ROAD MOTOR MART LIMITED ..... APPLICANT**

**AND**

**CHIEF LAND REGISTRAR ..... 1<sup>ST</sup> RESPONDENT**

**ROCKVILLE JUNIOR ACADEMY LIMITED ..... 2<sup>ND</sup> RESPONDENT**

**GERVASE OMOLO ODIKO ..... 3<sup>RD</sup> RESPONDENT**

**GROUP LIFE INSURANCE SCHEME.....4<sup>TH</sup> RESPONDENT NAIROBI**

**CITY COUNTY GOVERNMENT ..... 4<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 5<sup>TH</sup> RESPONDENT**

**CHIEF LAND REGISTRAR ..... 6<sup>TH</sup> RESPONDENT**

**THE TRUSTEES OF THE KENYA INDUSTRIAL RESEARCH &  
DEVELOPMENT STAFF RETIREMENT & GROUP LIFE INSURANCE  
SCHEME ..... 7<sup>TH</sup> RESPONDENT**

**NAIROBI CITY COUNTY GOVERNMENT ..... 8<sup>TH</sup> RESPONDENT**

**DIRECTOR OF SURVEY ..... 9<sup>TH</sup> RESPONDENT**

*(Being an application for an injunction and stay of execution of judgement and decree delivered in Environment and Land Court at Nairobi (Mboya J) on 22nd May 2023 in ELC Case No. 1382 of 2016 as consolidated with ELC Case No.706 of 2011 and ELC Case No. 174 of 2017)*



## RULING

1. The Notice of Motion dated 28<sup>th</sup> July 2023 by the applicant is expressed to be brought under Section 3A & 3B of the *Appellate Jurisdiction Act* Cap 9 Laws of Kenya, Rule 5(2) (b), Rule 41, 42 and Rule 47 of the *Court of Appeal Rules 2010*( now 2022 Rules). It seeks the following orders:
  1. Spent ...
  2. Spent ...
  3. The Honourable Court be pleased to issue an order staying execution of the Judgement delivered by Hon. Oguttu Mboya J. dated 22<sup>nd</sup> May 2023 and the Decree arising there from, issued in ELC Case No. 1382 of 2016 as consolidated with ELC Case No. 706 of 2011 and ELC Case No. 174 of 2017 in the Environment and Land Court at Nairobi, pending the hearing and final determination of this application.
  4. That pending the hearing and determination of the application herein, the Honourable court be pleased to issue an order restraining the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents, their servants, agents and/or employees or anyone else claiming rights or ownership under any of them from selling, marketing/advertising for sale, distributing, trespassing, alienating, claiming ownership and or interfering with the applicant's quiet possession, peaceful enjoyment and or ownership of the parcel of land known and registered as Land Reference Number: Nairobi Block 107/1133 or any part thereof.
  5. This prayer seeks the stay orders prayed in prayer number 4, pending the hearing and determination of the intended appeal.
  6. This prayer seeks the restraining orders prayed in prayer number 3, pending the hearing and final determination of the intended appeal.
  7. The costs of this Application be provided for.
2. The motion is based on the grounds set out on its face stating that the applicant is the registered proprietor of Land Reference Number: Nairobi Block 107/1133 for which it has had quiet possession. The applicant is aggrieved by the judgement delivered on 22<sup>nd</sup> May 2023 by Hon. O. Mboya, J and the decree issued on 20<sup>th</sup> July 2023 effectively dispossessing it of its property. The applicant has already filed and served a notice of appeal and the letter bespeaking the typed proceedings on all parties in the suit.
3. The supporting affidavit by Francis Ng'ang'a Mundia on behalf of the applicant is verbose and argumentative and we take the liberty to summarize the arguments. The applicant avers that the 3<sup>rd</sup> respondent had adduced two titles for non-existent property as evidence. It was argued that the 4<sup>th</sup> respondent did not claim that it ever acquired the applicant's property, nor did it adduce any legal document involving the applicant's property. Further, the applicant pointed out that the 3<sup>rd</sup> respondent testified that the suit property was and remains registered in the name of the applicant. In addition, it stated that the 4<sup>th</sup> respondent is not a body corporate capable of owning land hence the Certificate of Lease dated 27<sup>th</sup> July 2016 is invalid and the learned Judge did not address this argument in his judgement.
4. The applicant avers that the 5<sup>th</sup> respondent stated that the suit property is registered in the name of the applicant and that the 4<sup>th</sup> respondent has never paid land rates for it. That the 6<sup>th</sup> respondent



asserted the property allegedly acquired by the 4<sup>th</sup> respondent, Land Reference Number: Nairobi/Block 10/1/1133 does not exist in the cadastral map.

5. The applicant filed a further affidavit dated 2<sup>nd</sup> November 2023 and averred that the suit property has never been in possession of either the 1<sup>st</sup> or 2<sup>nd</sup> respondent. That the 2<sup>nd</sup> respondent produced an alleged sale agreement and transfer for a property L.R No. Nairobi/Block 107/1/1133 Umoja Estate, whereas a certificate of lease produced was issued to the 1<sup>st</sup> respondent.
6. This application was opposed by a replying affidavit of the 1<sup>st</sup> and 2<sup>nd</sup> respondents sworn on 4<sup>th</sup> August 2023 and that of the 4<sup>th</sup> respondent sworn on 28<sup>th</sup> August 2023. The 1<sup>st</sup> and 2<sup>nd</sup> respondents' affidavit states that the applicant has not given sufficient reasons for grant of stay of execution nor, provided security for the due performance of the Decree. That the learned Judge took into consideration all oral and documentary evidence adduced in court and the applicant does not stand to suffer any prejudice if stay is not granted.
7. The 4<sup>th</sup> respondent avers in its replying affidavit that by dint of the judgement the applicant seeks to appeal against, the applicant's certificate of lease to L.R Nairobi/Block/107/1133 was cancelled and the suit property now belongs to the Scheme.

The official search conducted in respect of the suit property shows its existence contrary to assertions by the applicant. The Scheme bought L.R Nairobi/Block/107/1/1133 situated in Umoja area of Nairobi from Rockville Junior Academy Limited and to this effect, there was a sale agreement executed on 14<sup>th</sup> March 2016. The Scheme made an application to correct the name in the register on 19<sup>th</sup> January 2017 since it was not a body corporate and therefore, could not hold property in its name.

8. The 4<sup>th</sup> respondent asserted that it would suffer great prejudice if the application is allowed and that the intended appeal lacks merit.
9. This Application was disposed of by way of written submissions. The applicant filed submissions dated 4<sup>th</sup> August 2023, through the firm of Murage Juma & Co. Advocates. The 1<sup>st</sup> and 2<sup>nd</sup> respondents filed theirs dated 7<sup>th</sup> August 2023 through the firm of Kwanga Mboya & Co. Advocates while those of the 4<sup>th</sup> respondent dated 24<sup>th</sup> November 2023 were filed through the firm of Muthaura Mugambi Ayugi & Njonjo Advocates.
10. The applicant reiterated the contents of its application and cited the case of *Kenya Commercial Bank Limited v Sheikh Osman Mohammed* [2013] eKLR, to urge that the application should be granted because the intended appeal is arguable. On whether the appeal will be rendered nugatory, the applicant relied on the holding in *Joseph Nicholas Murage (As administrator of the Estate of Bernard Chiori Murage) v Softwhite Beach Limited & five others* [2021] eKLR.
11. The 1<sup>st</sup> and 2<sup>nd</sup> respondents reiterated the contents of their joint Replying Affidavit and referred to *Shall Ltd v Kibiru and Another* [1986] 1 KLR 410 on the conditions to be met for stay of execution to be granted. They contended that the applicant did not meet those conditions and prayed that the application be dismissed.
12. The 4<sup>th</sup> respondent relied on the decisions of *Stanley Kangethe Kinyanjui v Tony Ketter & 5 Others* [2013] eKLR, *Nguruman Limited v Jan Bonde Nelson & 2 Others* [2014] eKLR and *Othere Limited v Scriboski Romuald Josef v The European Foundation for Polish Kenyan Operation* [2023] eKLR on factors for consideration by the Court before granting stay orders. They urged that the application is unmerited and should be dismissed with costs to the 4<sup>th</sup> respondent.



13. The issue for determination before us is whether the applicant has satisfied the conditions for this Court to grant the orders of stay of execution, against the judgment and decree of the court dated 22<sup>nd</sup> May 2023. Our jurisdiction under Rule 5(2)(b) is original, independent, and discretionary. It must however, be exercised judiciously and rationally, and not out of impulsiveness or sympathy.
14. The unfettered discretion to grant an order for a stay of execution is predicated on principles that are now well-settled. First, an applicant must prove that they have an arguable appeal. That is, the intended appeal should not be frivolous, or an abuse of the court. Secondly, an applicant should demonstrate that unless the order for stay of execution is granted the intended appeal would be rendered nugatory. This Court in *Multimedia University & Another v. Professor Gitile N. Naituli* (2014) eKLR, restated these principles as follows:

“When one prays for orders of stay of execution, as we have found that those are what the applicants are actually praying for, the principles on which this Court acts, in exercise of its discretion in such a matter, is first to decide whether the applicant has presented an arguable appeal and second, whether the intended appeal would be rendered nugatory if the interim orders sought were denied. From the long line of decided cases on Rule 5(2)(b), the common vein running through them and the jurisprudence underlying those decisions was summarized in the case of *Stanley Kangethe Kinyanjui vs. Tony Ketter & Others* [2013] eKLR as follows:

  - i. In dealing with Rule 5(2) (b) the Court exercises original and discretionary jurisdiction and that exercise does not constitute an appeal from the trial Judge’s discretion to this Court.
  - v. The discretion of this Court under Rule 5(2) (b) to grant a stay of injunction is wide and unfettered provided it is just to do so.
  - vi. The Court becomes seized of the matter only after the notice of appeal has been filed under Rule 75.
  - vii. In considering whether the appeal will be rendered nugatory the Court must bear in mind that each case must depend on its own facts and peculiar circumstances.
  - viii. An applicant must satisfy the Court on both the twin principles.
  - ix. On whether the appeal is arguable, it is sufficient if a single bona fide arguable ground of appeal is raised.
  - x. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the Court; one which is not frivolous.
  - xi. In considering an application brought under Rule 5(2) (b), the Court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.
  - xii. The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.”
15. On whether the appeal is arguable, we keep in mind that it is sufficient if a single bona fide arguable ground of appeal is raised. The applicant herein outlined various grounds for determination in the intended appeal which mainly revolve around who is the rightful owner of the suit property. Without



analyzing the grounds lest we embarrass the bench that will be seized of the appeal, it is our considered view that these are not idle grounds and ought to be given a chance to be heard.

16. On the second factor as to whether the appeal would be rendered nugatory if the stay of execution is not granted, the term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling as was stated in *Reliance Bank Ltd v Norlake Investments Ltd* [2002] 1 EA 227 on page 232. Whether or not an appeal will be rendered nugatory, depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved. (See *Multimedia University & Another* ) (supra).
17. The 4<sup>th</sup> respondent seeks to execute the judgement dated 22<sup>nd</sup> May 2023 and the Decree dated 20<sup>th</sup> July 2023 which will dispossess the applicant of the suit property and have it registered under its name. In the event this execution proceeds, the property will be transferred to the 4<sup>th</sup> respondent and as such, the appeal by the applicant would be rendered nugatory.
18. In light of the foregoing analysis, we are satisfied that the application dated 28<sup>th</sup> July 2023 has merit and is therefore, allowed with the following orders:
  - i. The execution of the Judgement dated 22<sup>nd</sup> May 2023 and Decree dated 20<sup>th</sup> July 2023 be and is hereby stayed.
  - ii. A restraining order is issued against the 1<sup>st</sup>, 2<sup>nd</sup> and 4<sup>th</sup> respondents, their agents and/or employees, from conducting any dealings with regard to the suit property.
  - iii. Costs of this application to abide the outcome of the intended appeal.

**DATED AND DELIVERED AT NAIROBI THIS 26<sup>TH</sup> DAY OF JULY, 2024.**

**ALI-ARONI**

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**. JUDGE OF APPEAL.**

**L. ACHODE**

.....

**. JUDGE OF APPEAL.**

**L. GACHOKA, CIArb, FCIArb**

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**. JUDGE OF APPEAL.**

I certify that this is a true copy of the original

**Signed**

**DEPUTY REGISTRAR**

