



REPUBLIC OF KENYA



KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

**Karanja v Karanja & another (Civil Application 160 of 2020)
[2024] KECA 1606 (KLR) (8 November 2024) (Ruling)**

Neutral citation: [2024] KECA 1606 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION 160 OF 2020
S OLE KANTAI, P NYAMWEYA & JM MATIVO, JJA
NOVEMBER 8, 2024**

BETWEEN

JOHN KIOKI KARANJA APPLICANT

AND

MARY WANGUI KARANJA 1ST RESPONDENT

SALOME NJERI KARANJA 2ND RESPONDENT

(An application for injunction and/or stay of execution under Rule 5(2)(b) of the Court of Appeal Rules against the Judgment and Orders of the High Court of Kenya at Nairobi (Elijah Obaga, J.) dated 6th February, 2020 in ELC Civil Suit No. 83 of 2010)

RULING

1. The applicant John Kioi Karanja has moved the Court in the motion on notice said to be brought under sections 3, 3A and 3B of the [Appellate Jurisdiction Act](#), rule 5(2)(b) of the Court of Appeal Rules and all enabling provisions of law praying in the main that we be pleased to issue:

“... an Order for stay of injunction/or the execution of the judgment of the High Court in ELC Civil Suit No. 83 of 2010 delivered on 6th February, 2020 ...”

2. That judgment was given in relation to a property known as LR. No. 11595 Muguga, Kiambu.
3. In grounds in support of the motion and in a supporting affidavit by the applicant it is said among other things that the trial Judge made drastic orders regarding applicant’s occupation of the suit property where the Judge held that the applicant had trespassed on the suit property from 1st June, 2006 and that the applicant give possession of the suit property forthwith; that the applicant has been living in the suit property with his mother since construction of a house on the suit property in 1978; that the suit property comprised permanent buildings. In a farm and garden that constituted the applicants’



mother's matrimonial home and that the applicant did not know any other home apart from that home where he lived with his wife and five children; that if evicted he and his family would be rendered destitute and homeless. Further that the applicant has developed the suit property by extending the main house, planting trees and refurbishing the house. It is said that the applicant is a beneficiary of the estate of his late father's estate, that the respondents Mary Wangui Karanja and Salome Njeri Karanja who are the executrices of the estate had failed to or neglected to apportion and transfer a share of the deceased's estate to the applicant; that the trial Judge erred when he found that the applicant became a trespasser on the suit property upon confirmation of grant on 2nd December, 2005; that the Judge erred in failing to hold that an eviction order should not issue against a beneficiary of an estate where distribution had not been completed; that the Judge erred in finding that the applicant had a 300 acre property in Nakuru when it had not been proved that that property had been transferred to him; that the applicant has an arguable appeal which will be rendered nugatory if stay of execution of the judgment is not ordered.

4. In a replying affidavit the respondents Mary Wangui Karanja and Salome Njeri Karanja say that they are the executrices of the will of their late father who died on 3rd February, 1995; that the will was proved on 15th December, 1999; that they are step-sisters of the applicant; that they and their sister Lucy Wambui were bequeathed the suit property but had not enjoyed possession of it because the applicant's mother Rhoda Wairimu Karanja (deceased) had been in occupation of it until her death in 2013 after which the applicant remained in possession of it; that the applicant and his late mother were attempting to re-write a will that had been proved; that the matter involving the estate of the applicant's father had been handled by many Judges for more than 25 years. Those many Judges had found that the suit property belonged to the respondents. The respondents state at paragraph 13 (b) to (f) (inclusive) of the affidavit:

- “(b) the application is barred by the doctrine of the finality of litigation; he has been to this Honourable Court twice, in the High Court many times, in the Constitutional and Human Rights Division once, once in the Environment and Land Court once and many times in the High Court where he and his late mother have made numerous application involving the same subject over the last twenty-five years;
- c. the Applicant is raising the same issue over and over again to ensure that litigation does not end contrary to the rule in *Rai v Rai Civil Application No NAI 307 of 2003* in which the Court of Appeal held that public policy demanded that there be an end of litigation and the doctrine of finality is a doctrine which enables the court to say litigation must end at a certain point regardless of what the party thinks of the decision which has been handed down;
- c. the Applicant does not have an arguable appeal;
- d. the Applicant and his late mother have wrongly acted as though our courts do not understand them; six judges of the superior (sic) have told him that the property belongs to us but he remains in a state of denial;
- e. the Applicant is guilty of laches; he has brought his application to this court four months after the superior court delivered the judgment which he is appealing against.”



5. The respondents further depone that in their late fathers will they were to inherit the suit property with their sister Lucy Wambui Karanja while their late father bequeathed a 300 acre farm in Nakuru to the applicant and his late mother; that the applicant was resident in United States of America and returned to Kenya when his father died and resided in the suit property with his late mother; that the applicant and his late mother had filed many suits partly challenging the will but those suits had been dismissed by various courts including this Court. The respondents think that the applicant has not satisfied principles on which an application of this nature is granted.
6. When the application came up for hearing before us on 23rd April, 2024 the applicant was absent and unrepresented. We noted that a hearing notice had been served on counsel on record for the applicant on 9th April, 2024.
7. Senior Counsel Dr. Gibson Kamau Kuria appeared for the respondents. Both sides had filed written submissions.
8. The applicant submits in written submissions that the orders for stay of execution prayed for are warranted as the loss to be suffered by the applicant is irreversible not capable of compensation by way of damages. The applicant says that he was unable to file a draft memorandum of appeal because he did not have proceedings of the trial court which he had applied for; that he resided in the suit property which had belonged to his late father; that the respondents have not completed the process of distributing the estate; that he will be rendered homeless if the judgment of the trial court is executed.
9. In a highlight of written submissions counsel for the respondents stated amongst other things that the applicant and his family were evicted from the suit property in 2021 and that there should be finality in litigation. It is submitted that the applicant has not satisfied the principles on which an application of stay of execution pending appeal is considered.
10. The principles which apply in an application for stay of execution pending appeal are well known. For an applicant to succeed he must, firstly, show that the appeal, or intended appeal is arguable which is the same as saying that the appeal is not frivolous. Such an applicant must, in addition, show that the appeal would be rendered nugatory absent stay - Stanley Kangethe Kinyanjui vs. Tony Ketter & Others [2013] eKLR.
11. We note from the record of the motion that the applicant's father wrote a will which was proved before the High Court where the applicant and his late mother were bequeathed a 300 acre property in Nakuru. The suit property was given to the respondents and their sister Lucy Wambui. The applicant has litigated before many Judges at the High Court and before this Court and it has been found that he is not entitled to the suit property at all. The respondents submit that the applicant was evicted from the suit property in 2021, in other words the horse has bolted and there is nothing left for the applicant to pursue. We cannot see any arguable ground of appeal and in those premises we need not consider the nugatory aspect of the matter. The motion fails and is dismissed with costs to the respondents.

DATED AND DELIVERED AT NAIROBI THIS 8TH DAY OF NOVEMBER, 2024.

S. ole KANTAI

.....

JUDGE OF APPEAL

P. NYAMWEYA

.....

JUDGE OF APPEAL



J. MATIVO

.....

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.

