



**Tichu & 16 others v Stephen Gitau Ikere, Loise Nyokabi Ikere, Lucy Nyambura Ikere, Samuel Kabau Ikere (Sued jointly as administrators of the estate of Ikere Gitau (Deceased) & 2 others (Civil Application E023 of 2021) [2022] KECA 74 (KLR) (4 February 2022) (Ruling)**

Neutral citation: [2022] KECA 74 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E023 OF 2021  
AK MURGOR, JA  
FEBRUARY 4, 2022**

**BETWEEN**

**KAMAU TICHU & 16 OTHERS ..... APPLICANT**

**AND**

**STEPHEN GITAU IKERE, LOISE NYOKABI IKERE, LUCY NYAMBURA IKERE, SAMUEL KABAU IKERE (SUED JOINTLY AS ADMINISTRATORS OF THE ESTATE OF IKERE GITAU (DECEASED) ..... 1<sup>ST</sup> RESPONDENT**

**ATTORNEY GENERAL ..... 2<sup>ND</sup> RESPONDENT**

**COMMISSIONER OF LANDS ..... 3<sup>RD</sup> RESPONDENT**

*(Being an application for stay of execution and injunction pending the hearing and determination of an intended Appeal from the Judgement of the High Court of Kenya at Nakuru (Mutungi, J.) dated 2nd day of March, 2021 in High Court ELC Petition No. 18 of 2019)*

**RULING**

1. This application was placed before me on 11<sup>th</sup> May, 2021 for direction on the question of urgency pursuant to rule 47 of the *Court of Appeal Rules*. After due consideration, I was not persuaded that it was urgent and so declined to certify it as such.
2. In their urgency application dated 28<sup>th</sup> April, 2021, the applicants contended that they have filed a Notice of Motion of even date wherein they have prayed for orders of i) a stay of execution of the judgment dated 2<sup>nd</sup> March 2021 entered against the applicants and ii) an injunction to restrain the respondents from interfering with their peaceful and quiet possession of the premises known as LR No. Nyandarua/South Kinangop/430 and 431 (the suit properties). They claim that the respondents are in the process of having them evicted from the suit properties and that their eviction is imminent.



3. The main reason for not certifying it as urgent is that there was nothing in the application that indicated any urgency. There was no material demonstrating that the applicants were about to be evicted.
4. On 8<sup>th</sup> November, 2021, the applicants requested that I re-consider my decision. This time they filed a further affidavit in support of urgency sworn by Njugi B. Gachogu Advocate on 15<sup>th</sup> July, 2021. I have reviewed the affidavit in support and again, there is still no evidence that their eviction is imminent. It was deponed that;
  - a) That by a judgment made on 2<sup>nd</sup> March, 2021, in ELC Petition No. 18 of 2019, the High Court dismissed the petitioner’s petition.
  - b) That as a result of the dismissal of the applicant’s petition, the conservatory order that had issued in the interim and pending determination thereof was discharged.
  - c) That the High Court granted an interim stay to the applicants for a period of sixty (60) from the date of delivery of the judgment and which period would expire on the 3<sup>rd</sup> May, 2021.
  - d) ...”
5. It was further deponed that the application had now become more urgent as the respondents have already moved to the High Court for an eviction order and taxation and that the appeal would be rendered nugatory if the respondents were to be allowed to proceed with eviction. But there is no additional material provided that would point to an impending eviction. It would seem that since I rendered my initial decision, there have been no further developments that would demonstrate that an eviction was imminent. Though it is alleged that the respondents have moved to the High Court, no evidence of such action has been produced.
6. Needless to say, in their written submissions dated 9<sup>th</sup> December, 2021, also in support of this application for reconsideration, it was again submitted that their eviction is imminent. This time however, though it is evidence from the bar, it was submitted that;

“5. The cause has now become even more urgent as the respondents have already moved to the High Court for eviction Orders pursuant to the said judgment ( Misc. Application E217 of 2021 at the High Court Nairobi).”
7. If indeed this be the case, then I am satisfied that the applicants have demonstrated the urgency in the Notice of Motion dated 28<sup>th</sup> April, 2021 in view of the clear steps taken by the respondents to execute the orders in the judgment dated 2<sup>nd</sup> March, 2021.
8. As such, I hereby do certify the application as urgent. Costs in the application.
9. It is so ordered.

**DATED AND DELIVERED AT NAIROBI THIS 4<sup>TH</sup> DAY OF FEBRUARY, 2022.**

**A.K. MURGOR**

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**JUDGE OF APPEAL**

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

**DEPUTY REGISTRAR**

