



Mithamo & 3 others v Mambo & 3 others (Environment and Land Appeal 5 of 2021) [2024] KEELC 3834 (KLR) (29 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3834 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL 5 OF 2021**

AK BOR, J

APRIL 29, 2024

BETWEEN

SABASKY MITHAMO 1ST APPELLANT
PAUL GITARI 2ND APPELLANT
ISAAC KARONJI 3RD APPELLANT
MARTHA MUTHONI 4TH APPELLANT

AND

STEPHEN MUKONO MAMBO 1ST RESPONDENT
PETER KIHANDO 2ND RESPONDENT
JEREMIAH MURIITHI 3RD RESPONDENT
SAITA KITONGA 4TH RESPONDENT

RULING

1. The court delivered its judgment in this appeal on 20/11/2023 vide which it dismissed the appeal and directed that each party would bear its costs for the appeal. Subsequently, the Appellants brought the application dated 19/12/2023 seeking to stay Nanyuki CMCCC No 36 of 2019 pending hearing and determination of the appeal they intend to file at the Court of Appeal in Nyeri. In addition, the Appellants sought to have the court grant any other order for the ends of justice to be met. The application was premised on the ground that the 1st Respondent colluded with the officials to say that he was entitled to a second water supply from the project and when the members of the project declined, he filed the suit before the Chief Magistrate Court. Further, that the 1st Respondent had not been connected with the second water supply and the 2nd to 4th Respondents were removed as officials of the water project due to irregular deals including awarding the 1st Respondent the second water supply. The application was supported by the 1st Appellant's affidavit who deponed that the 1st



- Respondent was not supposed to be connected with Ngare Ndare water project according to the Rules and Constitution of the water project. He maintained that the procedure for water connection was not followed and that the officials of the water project colluded with the 1st Respondent to have the second water supply connected to the 1st Respondent. The Appellants sought stay of implementation of the decree issued in Nanyuki CMCCC No 36 of 2019 on 29/9/2022 which directed the Appellants to connect water to the 1st Respondent's plot no. 889 and his homestead without any condition in default of which the connection was to be supervised by the administration police officers.
2. The 1st Respondent swore the affidavit in opposition to the application and deponed that a similar application was heard and dismissed by the Magistrates Court. He added that another application was filed before this court seeking stay of execution and the court delivered its ruling on 14/2/2022 and declined to grant orders for stay. The 1st Respondent contended that no memorandum of appeal was annexed to prove that the intended appeal to the Court of Appeal would be rendered nugatory. He urged the court to dismiss the application.
 3. The Appellants filed submissions which the court considered. The Appellants submitted that the 1st Respondent had not been connected with the second water supply to date. Further, that the appeal had overwhelming chances of success and that it would be rendered nugatory if stay were not granted. They added that the application was made without delay and that the decree was over four years and had not been executed.
 4. The issue for consideration is whether the court should stay execution of the decree from the Magistrates Court pending hearing and determination of the appeal to be filed at the Court of Appeal in Nyeri.
 5. From the judgment delivered by this court on 20/11/2023, it is apparent that the 1st Respondent connected water to plot no. 894, which is different from the subject matter of the suit and appeal altogether. The subject matter of the dispute before the Magistrates Court and the appeal before this court was connection of water to plot no. 898. The trial court allowed the 1st Respondent to amend the plot number in his suit to read 899 instead of 889.
 6. In light of the 1st Respondent's uncontroverted assertion that he had already connected water to a different plot, the court is neither satisfied that it should stay execution of the decision made by the trial court nor has it been shown how the appeal will be rendered nugatory unless stay orders are granted.
 7. The court declines to grant the orders sought in the application dated 19/12/2023. Each party will meet its costs for the application.

DELIVERED VIRTUALLY AT NYAHURURU THIS 29TH DAY OF APRIL 2024.

K. BOR

JUDGE

In the presence of:

Mrs. Mercy Kaume for the Appellant

Mr. William Bwonwonga for the 1st Respondent

No appearance for the other Respondents

