



Kiriko Farmers- Mau Summit Ltd v Ngenia Farmers Co. Ltd & another (Environment and Land Appeal 34 of 2023) [2024] KEELC 3454 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 3454 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL 34 OF 2023**

**A OMBWAYO, J
APRIL 11, 2024**

BETWEEN

KIRIKO FARMERS- MAU SUMMIT LTD APPELLANT

AND

NGENIA FARMERS CO. LTD 1ST RESPONDENT

KIRIKO FARMERS CO. LTD 2ND RESPONDENT

RULING

1. Kiriko Farmers – Mau Summit Ltd hereinafter referred to as the applicants have come to court for orders that pending the hearing and determination of Nakuru ELC Appeal No. 34 Of 2023 there be a stay of execution of the decree and the eviction order issued in Nakuru Civil Suit No. NO. 705 of 1987 and all the consequential orders issued pursuant thereto. In alternative this Honorable Court be pleased to issue orders of the current status quo as regards to LR 2684 (subdivided LR 2684/2 & LR 2684/3) pending hearing and determination of this appeal. That the costs of this application be costs in the cause.
2. The application is based on facts that the Appellant/ Applicant being dissatisfied and aggrieved by the ruling delivered on 31st October 2023 in Nakuru Civil Suit No. 705 OF 1987 has filed the appeal herein. This appeal raises salient and/or pertinent issues of law and facts hence has overwhelming chances of success. There is no inordinate delay in filing the present application. Substantial loss will result to the applicant unless the orders sought are issued. That if stay of execution orders are not granted the respondent will proceed with execution to the detriment of the members of the applicant who have settled on the suit parcel for over 40 years. The applicants is ready, willing and able to abide by any terms that this Honorable court may deem fit to order. It is in the Interest of justice and equity that the orders sought herein be granted as prayed. The Respondent shall not suffer any prejudice as it has never been in possession and/or occupation of the suit parcel. It is the interest of justice that this Honorable Court grants the orders sort herein.



3. In the affidavit of Newton Kabatha Kimani it is deponed that the subject suit Land was subdivided into plots and members settled on respective plots and have been in occupation peacefully until 15th February 2023 when 1st respondent trespassed onto the land and caused damages on the property.
4. The appellant was not a party in the suit but was affected by the judgment. The appellant made an application dated 8th March 2023 seeking to be enjoined in the suit but the same was dismissed and the applicant is dissatisfied with the ruling and has appealed. The applicant believes that the appeal has very high chances of success. The members of the appellant have lived on the land peacefully and the appellant believes that if the decree is not set aside the members of the appellant will suffer prejudice. The applicant believes that if stay is not granted the members of the appellant will suffer prejudice.
5. James Mariate Muiru chairman of the 1st respondent filed a replying affidavit whose gist is that the land originally LR 2684 was bought by contribution of money from both members of Ngenia Farmers Co. Ltd and Kiriko Farmers Mau Summit Ltd and registered in the name of Kiriko Farmers – Mau Summit Ltd and the land was to be shared equally. The applicant illegally subdivided and shared out the land but the subdivision was nullified by the court and it was ordered that there be no further dealings in the land. The land was officially subdivided vide a court order and that the applicant are in occupation of the land that does not belong to them.
6. The judgment of the court was made in 1993, and various applications have been filed and determined and that litigation must come to an end. The respondent states that if the court is inclined to grant the stay orders then it should make an order that the applicant provides for security.
7. I have considered the application, replying affidavit and rival submission and do find that relied law is Order 42 Rule (6) (1) and (2) of the [Civil Procedure Rules 2010](#). The said provides that: -
 6. Stay in case of appeal [Order 42, rule 6] (1)

No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (1) unless—
 - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
8. In this case, the ruling was delivered on 31st October 2023 and the application for stay is made on 24th January 2024. Bearing in mind the age of the dispute that starts from the mid 1980's there was an inordinate delay in filing the application to be enjoined and for stay of execution pending appeal. This court observes that the judgment sought to be set aside was made on 21st May 1993 and decree extracted on 5th July 1993. Many applications have been filed and determined since then. I agree with the respondent that litigation must come to an end. The applicant has not demonstrated how she will suffer substantial loss and yet she has already settled her members on the land. It is proper to note that



her members have participated in the suit and that it appears that they want to have a second bite at the cherry, so to speak. This court finds no merit in the application and the same is dismissed with costs.

RULING DATED SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 11TH DAY OF APRIL 2024.

A O OMBWAYO

JUDGE

