



Njiri ((Suing as the Legal Representative and Administrator of the Estate of the Late Wilson Njiiri Gikonyo Deceased)) v Wangui & 7 others (Environment & Land Case 193 of 2014) [2024] KEELC 1757 (KLR) (11 April 2024) (Ruling)

Neutral citation: [2024] KEELC 1757 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 193 OF 2014
A OMBWAYO, J
APRIL 11, 2024**

BETWEEN

**DAVID GIKONYO NJIRI PLAINTIFF
(SUING AS THE LEGAL REPRESENTATIVE AND ADMINISTRATOR OF THE
ESTATE OF THE LATE WILSON NJIIRI GIKONYO DECEASED)**

AND

**RUTH MARY WANGUI 1ST DEFENDANT
WILLIAM WANJOHI MUREITHI 2ND DEFENDANT
FAMILY SHADE AFRICA LIMITED 3RD DEFENDANT
HELLEN NJERI WANJOHI 4TH DEFENDANT
KEREN JEPCHUMBA AYABEI 5TH DEFENDANT
DANIEL OWOUR ONYANGO 6TH DEFENDANT
ELIJAH MBARU NDUNGU 7TH DEFENDANT
GODFREY MICHAEL OTIENO NYAMA 8TH DEFENDANT**

RULING

1. Ruth Mary Wangui and 7 others have come to court for stay of execution of the judgment made on February 15, 2024 and all consequential orders therein pending hearing and determination of the appeal. The applications is grounded on the facts that Judgment was delivered in the matter herein on the 15th of February 2024 against the applicants herein and in favour of the respondent. The applicants being aggrieved by the said judgment intend to file an appeal against the same in the Court of Appeal and have since lodged a notice of appeal to that effect.



2. Unless stay is granted herein the applicants stand to be prejudiced and to suffer substantial and undue loss since the respondent may execute the judgment and cancel the applicants' titles to the suit parcel. The applicants have an arguable appeal with a high likelihood of success which may be rendered nugatory, superfluous and a mere academic exercise should the orders sought herein not be granted.
3. The applicants have filed the instant application without undue delay and are ready to deposit security for costs as may be determined on just and reasonable terms by the court.
4. The application is supported by the affidavit of William Wanjohi who states that he is the 2nd defendant/ applicant in this matter thus competent to swear this affidavit. The respondent filed the instant suit in which a judgment was delivered against us on the 15th of February 2024. The applicants being aggrieved by the said judgment intend to file an appeal against the entire judgment and have since lodged a notice of appeal to that effect. There being no orders staying execution pending the hearing and determination of our appeal, the respondent may proceed and execute the judgment which will lead to the cancellation of our titles and as a result causing us to suffer substantial and irreparable loss. The applicants have an arguable appeal with a high likelihood of success and which will be rendered nugatory if the orders for stay are not granted. The application has been brought timeously and without undue delay.
5. In the circumstances it is just and necessary that the orders sought be granted as they are willing to deposit security for costs on just and reasonable terms as may be decided by this honorable court.
6. The application is opposed by David Gikonyo Njiri who states that the application is faulty as the application were granted 15 day stay of execution pending appeal. He states that the application is brought outside the 15 days granted by court.
7. I have considered the application and the replying affidavit and do find that the main issue for determination is whether stay of execution pending appeal should be granted.

Order 42 rule 6 of the [Civil Procedure Rules](#) 2010 that provides: -

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.



- (3) Notwithstanding anything contained in subrule (2), the court shall have power, without formal application made, to order upon such terms as it may deem fit a stay of execution pending the hearing of a formal application.
- (4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.
- (5) An application for stay of execution may be made informally immediately following the delivery of judgment or ruling.
- (6) Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.

8. I do find that the application has been filed timeously and that there is no inordinate delay. Moreover, that if stay is not granted the applicant will suffer substantial loss because the land registered in their names will be transferred to the respondent.

9. I do grant an order that there be stay of execution pending appeal for a period of 100 days. The applicants to deposit in court security for costs of the value of Kshs 500,000/= or cash of ksh 300,000 within 30 days failure of which the application will be dismissed for non- compliance. Cost in the appeal. Orders accordingly.

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

A. O. OMBWAYO

JUDGE

