



Gichemi (Suing as the personal representative of the Estate of the Late Gichemi Njuguna - Deceased) v Kamanu & another (Environment & Land Case 308 of 2015) [2024] KEELC 4451 (KLR) (30 May 2024) (Ruling)

Neutral citation: [2024] KEELC 4451 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 308 OF 2015**

**A OMBWAYO, J
MAY 30, 2024**

BETWEEN

PAUL MWANIKI GICHEMI (SUING AS THE PERSONAL REPRESENTATIVE OF THE ESTATE OF THE LATE GICHEMI NJUGUNA - DECEASED) PLAINTIFF

AND

**BRENDAN KIMANI KAMANU 1ST DEFENDANT
MWATHI NDIBARU 2ND DEFENDANT**

RULING

Brief Facts

1. The Defendants filed the instant application dated 2nd April, 2024 seeking the following orders:
 1. Spent.
 2. Spent.
 3. That this Honourable court be pleased to issue an order of stay of execution of the judgment delivered on 14th March, 2024 pending the hearing and determination of an appeal in the court of appeal against the said judgment.
 4. That the costs of this application be provided for.
2. The Application was based on grounds set out and supported by the Affidavit of Brendan Kimani Kamanu the 1st Defendant/Applicant herein sworn on 2nd April, 2024. The 1st Defendant/Applicant stated that judgment was delivered on 14th March, 2024 and the court granted them stay of execution of the judgment for a period of 15 days. He stated that the said days have since expired hence there



is a possibility that the Plaintiff shall execute the terms of the judgment. That being dissatisfied with the whole judgment, together with his co-applicant they filed and served a Notice of Appeal on 25th March, 2024. He stated that the Plaintiff/Respondent may execute the judgment which shall result in the Defendants/Applicants' title deeds being cancelled. He further stated that new titles may be issued to the Plaintiff who can sell to third parties or even evict the Defendants from the suit land. He further stated that the said actions may render the appeal nugatory and cause substantial loss to them. He stated that the Plaintiff/Respondent shall not suffer prejudice since they shall still execute in the event of the loss of the appeal. He also stated that they are willing to abide by the terms and conditions that the court shall be inclined to impose. In conclusion, he stated that it is fair and just that the orders sought be granted so as to give them room to exhaust their rights.

Analysis and Determination

3. This court has carefully considered the application and the main issue for determination is whether the order for stay of execution pending appeal should issue. This court is alive to the fact that the principles governing the grant of an order for stay of execution pending appeal are now settled. The relevant law is provided for under Order 42 Rule 6 1(2) of the [Civil Procedure Rules](#) which states as follows: -

- (2) No order for stay of execution shall be made under sub rule (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.”

4. In [RWW V EKW](#) (2019) eKLR the court held as follows:

.....the purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”

5. It is noteworthy that grant of an order for stay of execution pending appeal is discretionary in nature whose purpose is to preserve the subject matter of the appeal. In this case, judgment was delivered on 14th March, 2024 and the Defendants/Applicants filed a Notice of Appeal on 25th March, 2024 as well as the instant application on 3rd April, 2024. With regard to the issue of delay, the time from which judgment was delivered to the time this application was brought before court, the same translates to about three (3) weeks. This court finds that the application has thus been brought without unreasonable delay.

6. On the issue of substantial loss, the Defendants/Applicants averred that they stand to suffer substantial loss if the Plaintiff/Respondent proceeds with execution as the 15 days period given by the court in its judgment has already lapsed. The Defendants/Applicants argue that their titles may be cancelled and they be executed from the suit property. It is not in dispute that the Defendants/Applicants have been in occupation of the suit property. It is this court's view that the Defendants/Applicants could be evicted in line with the impugned judgment and therefore suffer substantial loss if stay is not granted.



7. It is not in dispute that the Defendants/Applicants have expressed that they are ready to abide by the terms and conditions that the court shall be inclined to impose. It is therefore this court's view that they can be directed by the court to do so. This court shall therefore exercise its discretion regarding the security of costs to be offered by the Defendants/Applicants.
8. In the upshot, the application is allowed and a stay of execution of the decree of this court issued on 14th March, 2024 is granted on the following conditions:
 - a. The Defendants/Applicants are hereby ordered to deposit in a fixed joint interest earning account in the names of both counsel for the parties the sum of Kenya Shillings Two Hundred and Fifty Thousand (Kshs. 250,000/=) only as security of costs within 14 days from the date of this ruling.
 - b. The Defendants/Applicants shall compile, file and serve a record of appeal within 60 days and move the Court appropriately towards the finalization of this Appeal within 180 days from the date of this ruling.
9. Finally, failure by the Defendants/Applicants to abide by any of the above stated two conditions within the fixed time lines will lead to an automatic lapse of the stay of execution herein irrespective of whether or not one condition shall have been met earlier than the failure of the latter. It is so ordered.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 30TH DAY OF MAY 2024.

A.O. OMBWAYO

JUDGE

