



**M'Mburugu v Mburugu & another (Environment and Land Appeal  
E006 of 2023) [2024] KEELC 4058 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 4058 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E006 OF 2023**

**CK NZILI, J**

**MAY 15, 2024**

**BETWEEN**

**GLADYS KARIMI M'MBURUGU ..... APPELLANT**

**AND**

**JENIFFER RINYA MBURUGU ..... 1<sup>ST</sup> RESPONDENT**

**ALICE CHAKU MBURUGU ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The court, by an application dated 12.2.2024 is asked to stay the execution of a judgment of the lower court delivered on 16.2.2023 and all its consequential orders, pending hearing and disposal of this appeal. The grounds are set on the face of the application and in the supporting and the application and the supporting affidavit of Gladys Karimi M'Mburugu sworn on 12.2.2024. It is averred that auctioneers proclaimed the appellant's household goods on 7.2.2024 to satisfy the decree as per the attached warrants of attachments and sale as an annexure marked GKM "3" or she terms the attachment as invalid or illegal and, if not stopped, likely to occasion her substantial harm or loss and render the appeal nugatory.
2. The application is opposed by a joint replying affidavit of Jeniffer Rinya Mburugu and Alice Chuka Mburugu, sworn on 28.2.2024. It is averred that the appellant's suit was dismissed with costs at the lower court; hence, there was no positive order to stay or enforce. The respondents aver that the costs being executed were for Kshs 124,319 as taxed, which certificate of costs was final, binding and has not been challenged on appeal. The respondents termed the application as frivolous, vexatious, scandalous and an abuse of the court process.
3. A party seeking a stay of execution has to apply without delay, offer security for the due execution of the decree, demonstrate substantial loss, and explain why it is in the interest of justice to grant the orders sought.



4. In *James Wangalwa v Agnes Naliaka Cheseto* (2012) eKLR, the court held that execution per se does not amount to substantial loss since it is a legal process and a party must show what more would happen to the substratum of appeal should the execution process interfere with the status of the substratum.
5. There is no dispute that the trial court issued a negative order. A court cannot stay a negative order. There was nothing the respondent was directed to do to the substratum of the suit save to be entitled to costs. A reference has not been filed regarding the taxed costs.
6. In *RWW v EKW* (2019) eKLR, the court said to grant or refuse a stay is discretionary and is done through balancing the interests of the two parties. The applicant has not offered any security for the due realization of the decree should the appeal not succeed.
7. The applicant has not termed the respondents as incapable of refunding the costs. The court has not been told how and why the warrants of proclamation and sale are illegal, invalid, and bad in law. It is not enough to allege a nugatory aspect without proof, as held in *NIC Bank Ltd v Aquinas Francis Wasike & another* (2015) eKLR. The upshot is that I find no merits in the application. The same is dismissed with costs.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 15<sup>TH</sup> DAY OF MAY, 2024**

In presence of

C.A Kananu

Githinji for Mbaabu Inoti for applicant

Mawira for Gichunge for the respondent

**HON. C K NZILI**

**JUDGE**

