



**Njoroge v Kinuthia & another (Environment & Land Case
101 of 2017) [2024] KEELC 3935 (KLR) (15 May 2024) (Ruling)**

Neutral citation: [2024] KEELC 3935 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT & LAND CASE 101 OF 2017**

A OMBWAYO, J

MAY 15, 2024

BETWEEN

MARGARET NJOKI NJOROGE PLAINTIFF

AND

ELIZABETH WAIRIMU KINUTHIA 1ST DEFENDANT

RICHARD GICHINI WAIREGI 2ND DEFENDANT

RULING

1. Richard Gichini Wairegi (hereinafter referred as the applicant) has come to court praying that the honorable court be pleased to order for stay of execution of the judgment/decree herein delivered and dated the 14th of March, 2024 and all the consequential orders thereto pending the hearing and determination of the intended appeal from the decree herein to the Court of Appeal. Such other orders be made as is just and expedient in the interest of justice. Costs of this application abide in the intended appeal.
2. The application is based on grounds that the 2nd defendant/applicant herein, being aggrieved with the judgment/decree of the Honorable Court delivered on the 14th day of March 2024, has lodged a Notice of Appeal dated the 18th day of March 2024 against the whole of the said judgment.
3. That the said intended appeal raises serious, weighty and triable issues of both fact and law and has high chances of Success hence ought to be facilitated by stay of execution.
4. That the 2nd defendant/applicant is apprehensive of the risk of being dispossessed of the suit property which he holds a valid title to, in line with the court's judgment delivered on the 14th of March 2024. That the 2nd defendant/applicant believes that his appeal stands a good end that the appeal will be rendered nugatory if stay of execution of the judgment/decree is not ordered pending the intended appeal. That unless the orders sought herein are granted, the plaintiff will shortly proceed execute the said judgment subjecting the 2nd defendant/applicant herein to substantial and irreparable



loss and damage and rendering the intended appeal nugatory. The applicant states that the instant application has been brought with alacrity and without undue delay. It is in the interest of justice that this application be allowed and the Honorable court has the requisite jurisdiction and discretion to grant the prayers sought hereby.

5. Stay pending appeal is underpinned on order 42 rule 6 of the *Civil Procedure Rule* 2010 which provides 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.
6. Moreover, that no order for stay of execution shall be made under the sub-rule unless 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 that 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.
7. In the replying affidavit of Margaret Njoki Njoroge, it is stated that the plaintiff had developed rental residential houses on the land by 12th April 2016 and 11th April 2016 when it was fraudulently registered in the names of the 1st and 2nd defendant respectively. She collects rent of Kshs37,000 monthly. She has been kept out of the involvement since April 2016 and therefore should not be denied the fruits of her judgment. That the applicant will continue to collect rent and entry to property.
8. I have considered the application, supporting affidavit and replying affidavit and do find that the application was brought within reasonable time. However, the applicant has not demonstrated through the affidavit that he would suffer substantial loss if stay is not granted. The court cannot infer or imply substantial loss, it must be proved by affidavit. In *Machira t/a Machira Co Advocates vs East African Standard* (2002) KLR 63, the court held an applicant must prove specific details and particulars of substantial loss otherwise without demonstrable pecuniary or tangible loss to the satisfaction of the court it shall not grant stay. I do find the application has no merit and is dismissed with costs.

RULING DATED, SIGNED AND DELIVERED VIRTUALLY AT NAKURU THIS 15TH MAY 2024

A O OMBWAYO

JUDGE

