



**County Government of Meru v Mathiu (Environment and Land Appeal  
E011 of 2024) [2024] KEELC 4925 (KLR) (19 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4925 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E011 OF 2024**

**CK NZILI, J  
JUNE 19, 2024**

**BETWEEN**

**COUNTY GOVERNMENT OF MERU ..... APPLICANT**

**AND**

**STANLEY KIOGORA MATHIU ..... RESPONDENT**

**RULING**

1. The court is asked to issue a stay order for the execution of the lower court decree following a judgment delivered on 30.1.2024. The grounds are contained on the face of the application and in a supporting affidavit of Liz Wanja Gikundi sworn on 15.4.2024. It is averred that the trial court erred in granting special damage of Khs.1,513,900/= which was not proved.
2. The applicant says that there is imminent danger of execution. In light of the developments in the legal landscape, quashing the need to seek leave and involve the Attorney General in the execution of the decree is likely to impact its constitutional functions, defeating the spirit of the Constitution and devolution.
3. The applicant says that it was likely to suffer substantial loss if stay orders were not granted. The applicant says it has an arguable appeal for the trial court departed from established legal principles; otherwise, without a stay, the appeal would be rendered nugatory.
4. Subsequently, the applicant says that as a government it is not required to offer any security for the due performance of the decree should the appeal not succeed as held in *Nzomo* (suing as the legal representative of the estate of Daniel Nzomo Wambua (deceased) vs Makeni County Government (E & L Case No. 355 of 2017) (2023) KEELC 17418 (KLR) (3<sup>rd</sup> May 2023 (Ruling)).
5. Though the respondent was served and a return of service filed on 15.5.2024, no response was filed. A party seeking a stay of execution has to move the court without unreasonable delay, establish there



will be a substantial loss, offer security for the due performance of the decree should the appeal not succeed, and again show that it is in the interest of justice to grant the orders sought.

6. This application was filed on 16.4.2024, following a judgment delivered on 30.1.2024 and a memorandum of appeal filed on 27.2.2024. I find that the delay is not inordinate or unreasonable in the circumstances. The second issue to consider is whether the applicant has demonstrated substantial loss which has to be prevented from happening, which, if allowed to take place, would alter change, or negate the essential core or substratum of the appeal. In *James Wangalwa vs Agnes Naliaka Cheseto* (2012) eKLR, the court said it was not enough to state that execution was imminent, given that execution is a legal process. The party has to offer tangible and cogent evidence that there would be immense suffering if the execution occurs. In a money claim, the court in *Kenya Shell vs. Kibiru & another* (1986) KLR 410 said it was not enough to say that the decretal amount is colossal.
7. The power to grant or refuse to stay is a discretionary power exercised in such a way as not to prevent an appeal. The applicant says that if the stay order is not granted, the attachment pursuant to the decree will cripple its service delivery.
8. The applicant is a devolved unit. Execution of decrees against it is governed by Order 29 Rule 2 (2) (b) *Civil Procedure Rules*, Section 134 of the *County Government Act* as read together with Section 129 of *Public Finance and Management Act* which is the law on budgeting and spending within the county government. There is no evidence that the applicant has been served with a notice under Section 21 of the *Government Proceedings Act* or a certificate to that effect for the satisfaction of the decree.
9. The applicant has stated that its appeal has arguable grounds inter alia on whether special damages were proved in line with the established legal principles. I think, if execution occurs, the appeal would be rendered nugatory. The upshot is that I allow for a stay of execution for a period of one year. The lower court file is to be availed to fast-track the hearing of the appeal.

Orders accordingly.

**DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 19<sup>TH</sup> DAY OF JUNE, 2024**

**HON. C K NZILI**

**JUDGE**

