



REPUBLIC OF KENYA



**Flooring & Interiors Limited v Muriithi & 2 others (Environment & Land
Case 237 of 2013) [2024] KEELC 4524 (KLR) (7 June 2024) (Ruling)**

Neutral citation: [2024] KEELC 4524 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT & LAND CASE 237 OF 2013**

JO OLOLA, J

JUNE 7, 2024

BETWEEN

FLOORING & INTERIORS LIMITED PLAINTIFF

AND

PETER NDEGWA MURIITHI 1ST DEFENDANT

THE CHIEF LAND REGISTRAR 2ND DEFENDANT

THE DIRECTOR OF SURVEY 3RD DEFENDANT

RULING

1. By the Notice of Motion dated 11th May 2023, M/s Flooring and Interiors Ltd (the Plaintiff) prays for an order that this Court may be pleased to stay the Judgment/decree dated 27th April 2023 pending an appeal to the Court of Appeal.
2. The application is supported by an affidavit sworn by the Plaintiff's director Wahome Gitonga and is premised on the grounds:-
 - i). That there is imminent danger of the Plaintiff losing the suit premises as a result of the Judgment delivered by this court;
 - ii). That the Plaintiff intends to appeal against the entire decision and the Appeal could be rendered nugatory if the stay is not granted;
 - iii). That the Respondents will not suffer any prejudice; and
 - iv). That it is only fair and just that the court grants the orders sought.
2. Peter Ndegwa Muriithi (the 1st Defendant) is opposed to the application. By his Grounds of Opposition dated 5th July 2023, the 1st Defendant asserts that:-



- 1). The application does not disclose any or any reasonable grounds for the orders sought;
 - 2). There cannot be a stay of a negative order, in this case a decree dismissing the Plaintiff's case; and
 - 3). There is no likelihood or danger of rendering an appeal nugatory by failing to order stay of execution.
3. I have carefully perused and considered the Motion as well as the Grounds of Opposition thereto. I have similarly perused and considered the submissions filed by the Learned Advocate for the Plaintiff. The Defendants did not file any submissions.
4. The Plaintiff herein prays for an order of stay of execution pending the hearing and determination of an Appeal arising from the Judgment of this court rendered on 27th April, 2023. In respect of an application for stay, Order 42 Rule 6 (2) of the *Civil Procedure Rules* pursuant to which the application is brought provides as follows:
- “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 the application has been made without unreasonable delay; and
 - b). Such security as the court orders for due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
5. As it were, the power of the court to grant or refuse an application for stay of execution is a discretionary one. It is apparent from the wording of Order 42 of the *Civil Procedure Rules* cited hereinabove that before the court proceeds to exercise that discretion, it must be satisfied that substantial loss may result to the Applicant.
6. In the matter before me, the Plaintiff contends that it has set in motion an appeal process and urges the Court to stay the decree arising from the Judgment of this Court so as not to render the Appeal nugatory.
7. By its Plaint dated 20th November 2013 as amended on 10th March 2016, the Plaintiff had sought a declaration that all subsequent sub-divisions of the parcel of land known as LR. No. 9395/103 as well as the issuance of deed plans and registration of transfer to the 1st Defendant, together with other unnamed persons, was illegal, void ab initio, a nullity and hence of no consequence. The Plaintiff accordingly sought an order that the 2nd Defendant be directed to cancel all the subsequent deed plans and certificates of titles issued to the 1st Defendant as well as the said unnamed persons.
8. In addition, the Plaintiff had sought an order of injunction to restrain the 1st Defendant from encroaching upon, trespassing or dealing with the suit property. It further urged the court to direct the 1st Defendant to deliver vacant possession of the portion of land that he was said to have illegally and unlawfully acquired.
9. Having considered the evidence placed before it by the parties, this Court was not persuaded that the Plaintiff was deserving of the said orders and proceeded to dismiss the Plaintiff's claim with costs.
10. That being the case, it was not clear to me what the Plaintiff now wants this court to stay. The Judgment of this court merely dismissed the Plaintiff's request for certain declarations and directions to be issued against the Defendants. Those were thus negative orders as stated by the 1st Defendant



that are incapable of being stayed. By the said decree, this Court did not order any of the parties to do anything or to refrain from doing anything or to pay any sum. It was thus, a negative order incapable of execution save in respect of costs.

11. Arising from the foregoing, it was evident that the application for stay before me is misconceived and incapable of being granted. The same is dismissed with costs to the 1st Defendant.

DATED, SIGNED AND DELIVERED AT NYERI THIS FRIDAY 7TH DAY OF JUNE, 2024.

In the presence of:

Mr. Nderi for the 1st Respondent.

No appearance for the Plaintiff.

No appearance for the 2nd and 3rd Respondents.

Court Assistant: Kendi

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J. O. OLOLA

JUDGE

