



**Gitonga v Njoki & another (Environment and Land Case Civil Suit
705 of 2016) [2024] KEELC 5665 (KLR) (18 July 2024) (Ruling)**

Neutral citation: [2024] KEELC 5665 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND CASE CIVIL SUIT 705 OF 2016**

LN MBUGUA, J

JULY 18, 2024

BETWEEN

CYNTHIA WANJIRU GITONGA PLAINTIFF

AND

CHRISTIAN NJOKI 1ST DEFENDANT

COUNTY GOVERNMENT OF NAIROBI 2ND DEFENDANT

RULING

1. Judgment was entered for the plaintiff herein on 28.7.2022. The plaintiff has filed a Notice of Motion application dated 15.8.2023 seeking orders of eviction of the defendant, her servants or agents from the suit parcel PlotB55 Umoja Innercore111, now parcel LR. Nairobi/Block83/1584, that the orders of eviction be executed by Interfiled Auctioneers, and that the OCS Buruburu police station be ordered to supervise the said execution.
2. The application is premised on the grounds set out in the body of the application and in the supporting affidavit of James Chege Macharia. He identifies himself as the lawful Attorney of the plaintiff. He avers that the 1st defendant has lodged an application for stay of execution at the Court of Appeal in Civil Appeal No. E293 of 2022, but the same was dismissed on 3.2.2023. Still, the defendant has persistently refused to vacate the suit premises.
3. The 1st defendant has opposed the application vide her replying affidavit dated 4.4.2024. She avers that indeed she had filed an application at the court of appeal for stay of execution whereof a ruling was delivered on 3.2.2023 in which her intended appeal was found to be arguable. That she has since filed the appeal in case No. E706 of 2023.
4. I have considered the rival arguments and submissions as well as the import of the ruling delivered on 3.2.2023 at the Court of Appeal in Civil Appeal E293 of 2022. At this juncture, I find it expedient to extract the verdict of the aforementioned ruling of the Court of Appeal where it was stated that;



We are satisfied that no substantial loss will be suffered by applicant. The applicant has not persuaded us that the appeal shall be rendered nugatory if we decline to grant the orders sought. We also find that there appears to be no threat of alienation of the property and even if this were to happen in the event of a successful appeal, an award of damages would be an adequate remedy. Indeed, the applicant has not even remotely suggested that the respondents are incapable of paying whatever damages are found to be due to her.

The foregoing being the case, the order that commends itself is that this application must fail and is therefore dismissed. The costs of the application shall abide the outcome of the appeal.”

5. The import of the said ruling is that there is no order for stay of execution of the judgment herein. That being the case, I find that the orders sought are geared towards the implementation of the judgment whereby an order of eviction had been given in the judgment of this court delivered on 28.7.2022. In the final analysis, I find that the application dated 15.8.2023 is found to be merited, the same is hereby allowed with costs to the plaintiff.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 18TH DAY OF JULY, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Kangethe for Plaintiff

Aswani for 1st Defendant

Steve Ogolla Kabiru holding brief for A. Wagula for 2nd Defendant

Court assistant: Eddel

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