



REPUBLIC OF KENYA



KENYA LAW
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Kagwe & another v Mwangi (Environment & Land Miscellaneous Case E005 of 2024) [2025] KEELC 707 (KLR) (19 February 2025) (Ruling)

Neutral citation: [2025] KEELC 707 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND MISCELLANEOUS CASE E005 OF 2024
LN MBUGUA, J
FEBRUARY 19, 2025

BETWEEN

JOSPHAT GATHUNGU KAGWE 1ST APPLICANT

NANYUKI MINICIPAL COUNCIL 2ND APPLICANT

AND

PAUL MWANGI RESPONDENT

RULING

1. This miscellaneous suit was filed by way of notice of motion application dated 18.6.2024 where Josephat Gathungu the 1st Applicant is seeking the following orders;
 - i. That the honourable court be pleased not to interfere with the decree order, part of the decree or order appealed against in any and notwithstanding Section 79c reject any existing or future appeal summarily.
 - ii. That the 1st applicant request for reversal/quashing of stay of execution entered on 26/4/2023.
 - iii. That the court has powers to order or consider a stay in case of appeal based on Order 42 Rule 6 (2,3,4).
 - iv. That any future appeal to be dismissed for failure to comply with Order 42 Rule 14 (13).
 - v. That the court order that the decretal sum, mesne profit and compensatory accrued rent payments elsewhere since unlawful dispossession of the 1st Applicant's land be deposited through a joint account for parties advocates as security for the due performance.
 - vi. That the costs of this application be provided"
2. The grounds in support of the application are that;



- a. That the court has not given direction on time within which the appeal should be filed by the appellant/defendant.
 - b. That unconditional stay of execution contributes to lack of laches to the defendants.
 - c. That the respondent has indicated that the court has given him indefinite period of time as when to file his appeal.
 - d. That failure to put security for costs as ordered will cause for stay of execution to lapse.
 - e. That there must be an appeal already filed for the court to be moved under Order 42 Rule 6 of the *Civil Procedure Rules* and since there is no proper appeal in court the orders of stay be quashed.
 - f. That the memorandum of appeal has no new grounds other than those heard in the lower court.
 - g. That the respondent has no arguable appeal with good prospect of success.
 - h. That the continued illegal occupation of the 1st Applicant's land by the respondent denies the decree holder a justifiable income to the equivalent of the awarded mesne profit by the trial court.
 - i. That it is for the interest of justice that this application be allowed.
3. The applicant has also sworn a supporting affidavit dated 18.6.2024.
 4. In opposition thereof, the respondent filed a Preliminary Objection dated 25.10.2024 averring that the application was filed by someone who is not an advocate and that the application is spent as an appeal has been filed in *ELC LA E012 OF 2024*.
 5. I find that there being an appeal in the case *ELC LA E012 OF 2024*, then it is a waste of precious judicial time to have related proceedings in this miscellaneous file. As such, the court will not go into the merits of the application dated 18.6.2024. The applicant herein should ventilate his arguments including the validity of the appeal in the substantive Suit No. *ELC LA E012 OF 2024*. The end result is that this miscellaneous file is hereby dismissed and each party is to bear their own costs of this suit.

DATED, SIGNED AND DELIVERED AT NANYUKI THIS 19TH DAY OF FEBRUARY 2025 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Ms. Wangu for Respondent

Josphat Kagwe – 1st Applicant

Nancy Mwangi – Court Assitant

