



**Kiragu v Waraki & another (Environment and Land Appeal  
E015 of 2023) [2024] KEELC 5875 (KLR) (20 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5875 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI  
ENVIRONMENT AND LAND APPEAL E015 OF 2023**

**AK BOR, J**

**AUGUST 20, 2024**

**BETWEEN**

**NANCY WAMBUI KIRAGU ..... APPELLANT**

**AND**

**JOHNSON KINGORI WARAKI ..... 1<sup>ST</sup> RESPONDENT**

**ANN WAMBUI MWANGI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. The Appellant brought the application dated 28/11/2023 seeking stay of execution of the judgment and decree issued by the Hon. Mr. B. Mararo, SPM, delivered on 17/10/2023 pending hearing and determination of the appeal. The application was made on the grounds that the trial court entered judgment in favour of the 1<sup>st</sup> Respondent and that being dissatisfied with that decision, the Appellant had preferred an appeal. She urged that she had an arguable appeal which would be rendered nugatory and she was willing to provide security.
2. The Appellant swore the supporting affidavit in which she deponed that she was granted 30 days stay of execution which lapsed on 16/11/2023. That being aggrieved and dissatisfied with the judgment she instructed her advocate who was then on record to file an appeal on 16/11/2023. She added that the Respondents would not suffer any prejudice if the application was allowed.
3. The court directed the Appellant to serve the application upon the Respondents and notes that there are affidavits of service on record confirming that the Respondents were served. The application was not opposed by the Respondents.
4. The issue for determination is whether the court should stay of execution of the decree emanating from the trial court. The Appellant has not demonstrated what substantial loss she would suffer if the court does not stay execution of the decree issued by the trial court.



5. If the Appellant were to succeed on her appeal, the suit land would still be available for her. She has not demonstrated any threat of eviction or that she was residing on the suit land.
6. The court notes that the Magistrates' court file was forwarded to this court for purposes of the appeal. The Appellant should have collected the typed proceedings and filed the record of appeal so that her appeal is heard and determined expeditiously.
7. The court declines to grant the orders sought in the application dated 28/11/2023. The Respondents are awarded the costs of the application.

**DELIVERED VIRTUALLY AT NAIROBI THIS 20<sup>TH</sup> DAY OF AUGUST 2024.**

**K. BOR**

**JUDGE**

In the presence of:-

Mr. Gichuki Gatumbu for the Appellant

Court Assistant: Diana Kemboi

No appearance for the Respondents

