



**M'Twaruchiu v Wachira & another (Environment & Land Case
2 of 2022) [2024] KEELC 5878 (KLR) (20 August 2024) (Ruling)**

Neutral citation: [2024] KEELC 5878 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT & LAND CASE 2 OF 2022
AK BOR, J
AUGUST 20, 2024**

BETWEEN

BETHA NDUMBA M'TWARUCHIU PLAINTIFF

AND

PAUL WAMBUGU WACHIRA 1ST DEFENDANT

MWICHWIRI TWO FARMERS COMPANY LIMITED (TWO 2ND DEFENDANT

RULING

1. The Plaintiff filed the application dated 18/4/2024 seeking to have the firm of TMM Advocates come on record to act for her in place of Maitai Rimita and Company Advocates and for the court to direct the 1st Defendant to contribute his equal share of the surveyor's costs based on the quote from Camden E. Land Surveyors dated 2/4/2024.
2. The Plaintiff swore the supporting affidavit and referred to the judgment delivered by this court on 13/12/2023 which directed parties to engage a surveyor to determine the aggregate sizes of the parcels of land known as Laikipia Daiga Umande Block 6/396 to 399. The 2nd Defendant was to meet the costs of the surveyor and if it were not able to do so, the Plaintiff and the 1st Defendant were to share the costs equally. The Plaintiff sought to replace her new advocate in place of the previous one based on the fact that the advocate had been in conduct of the matter. She deponed that she had procured a surveyor to conduct the survey of the suit property at the cost of Kshs. 114,000/= but the 1st Defendant was reluctant to ensure compliance with the court decree because he has been in occupation and use of the suit land.
3. The Defendants did not file a response to the application. When the matter came up on 11/6/2024, the 1st Defendant's advocate informed the court that they had filed an application for stay of execution before the Court of Appeal and were awaiting certification by the Court of Appeal. On 25/6/2024, the court directed parties to file short written submissions on the application. The Plaintiff submitted



that the 1st Defendant's main ground of opposition was that he had filed an appeal before the Court of Appeal and that this court was functus officio.

4. The Plaintiff relied on Order 42 Rule 6(1) of the [Civil Procedure Rules](#) to support her contention that an appeal does not operate as a stay of execution unless the court orders otherwise.
5. Should this court grant the orders sought in the application dated 18/4/2024? Having the aggregate sizes of the parcels of land known as Laikipia Daiga Umande Block 6/396 to 399 determined by a surveyor will assist the parties ascertain the actual size of the land in dispute even for purposes of the appeal. It is just and meet to grant the orders sought by the Plaintiff.
6. The court grants the prayers sought in the application dated 18/4/2024.

DELIVERED VIRTUALLY AT NAIROBI THIS 20TH DAY OF AUGUST 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Tyson Mwendwa for the Plaintiff

Mr. Muia Mwanzia for the 1st Defendant

