



**Marete (Suing as the legal representative of the Estate of M’Muketha M’Mwongo
- Deceased) & another v William (Sued as the legal representative of the
Estate of William kaburu M’Inoti - Deceased) (Environment and Land Appeal
E007 of 2023) [2024] KEELC 6351 (KLR) (25 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6351 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E007 OF 2023**

CK NZILI, J

SEPTEMBER 25, 2024

BETWEEN

**KENNETH MARETE (SUING AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF M’MUKETHA M’MWONGO - DECEASED) 1ST APPELLANT**

**NGUCHINE WILLIAM (SUED AS THE LEGAL REPRESENTATIVE OF THE
ESTATE OF WILLIAM KABURU M’INOTI - DECEASED) 2ND APPELLANT**

AND

**JENIFFER NGUCHINE WILLIAM (SUED AS THE LEGAL
REPRESENTATIVE OF THE ESTATE OF WILLIAM KABURU M’INOTI -
DECEASED) RESPONDENT**

RULING

1. The court, by an application dated 3.7.2024, is asked to stay the execution of a decree in CM ELC No. 33 of 2021 and ELCA E007 of 2023 regarding LR No. Abogeta/Lower Chure/145.
2. The reasons are that after the High Court delivered its judgment on 14.2.2024 allowing the appeal, an appeal has been preferred at the Court of Appeal. The applicant, based on an affidavit sworn by Jeniffer Ncugune William on 3.7.2024, says her appeal at the Court of Appeal has a high chance of success; she has developed and fenced the suit land as per photos attached as JNW “1”; the respondent on 24.5.2024, threatened to evict her and take over the suit land; unless the orders sought were granted, the appeal would be rendered nugatory, her properties would be destroyed, alienated or sold and that there was a need to maintain the status quo, pending hearing and determination of the intended appeal.



3. The applicant avers that the respondent took advantage of her sickness and hospitalization, yet the subject land is her only source of livelihood. She has attached copies of medical records as an annexure marked JWW “4”.
4. The application was opposed on 16.7.2024 by Kenneth Marete on the basis that the appellant has not been in exclusive control of the property, is not in use and occupation of it and want to use stay orders to evict him from the land. The respondent avers that the application was brought five months after the judgment was delivered; hence was an afterthought meant to deny him his rights.
5. The respondent further relies on written submissions dated 16.7.2024. Reliance was placed on *Charles Wabome Gethi vs Angela Wairimu Gethi* 2008 (eKLR) and *Nguruman Ltd vs Jan Bonde Nielsen & others* (2014) eKLR.
6. This court pronounced itself on the appeal by a judgment dated 14.2.2024. It found that the 1st & 2nd respondents fraudulently and illegally acquired the title deed issued on 13.6.2019, for it formed part of the estate of the late William Kaburu. It allowed the appeal and, by extension, the lower court suit. The effect of the judgment was for the land to revert to the estate of the deceased to be dwelt with as per the *Law of Succession Act* Cap 160.
7. In the defense dated 31.3.2021, there was no counterclaim. The witness statement dated 31.3.2021 indicated that all that the applicant had on the land was a live and barbed wire fence seasonal crops and nappier grass.
8. The parameters to apply for a stay at the court which the decision is appealed from are governed by Order 42 Rule 6 *Civil Procedure Rules*. They include sufficient cause, satisfaction of substantial loss and furnishing of security.
9. In the *Re Estate of Harish Chandra Hindocha (deceased)* [2021] eKLR, the court cited *William Ntomauta M’Ethenge sued as M’Mauta Nkori v Baikamba Kirimania* [2017] eKLR, that a court of law aims to do justice to the parties and *Tosbika Construction Co. Ltd v Harambee Cooperative Savings & another* [2019] eKLR, that the exercise of discretion by a court should be judicious. In *AG v Okiya Omtata Okoiti & another* [2019] eKLR, the court said that the guiding principle when deciding whether the intended appeal will be rendered nugatory is whether what the applicant intends to reclaim would be reversed. The court said that an arguable appeal need not succeed but one that is sufficient for interrogation by the court. As to the nugatory aspect the court said it was one where the consequential effects for the failure to grant the reliefs sought would either be irreversible or highly prejudicial so as to render of no consequence the intended appeal, if it is ultimately was successful.
10. Sufficient cause to stay execution under Order 42 Rule 6 (1) & (2) *Civil Procedure Rules* has to be demonstrated. In *Machira t/a Machira & Co Advocates v E.A Standard* [2002] KLR 63, the court observed that the ordinary principle is that a successful party is entitled to the fruits of his judgment and the court’s overriding objective should be to do justice in accordance with the law and to prevent abuse of the court process.
11. In *Awale Transporters Ltd v Kelvin Perminus Kimanzi* [2020] eKLR, the court observed that an applicant must explain in what manner the said appeal would be rendered nugatory, the loss he was likely to suffer if a stay was not granted and that the fact that the opposite party intends to proceed with execution was not reason enough to grant stay, since being the successful litigant, he was lawfully entitled to enjoy the fruits of his judgment.
12. In *Jason Ngumba Kagu & others v Intra Africa Assurance Co. Ltd* [2014] eKLR, the court said the substantial loss was the cornerstone of the jurisdiction of the court in granting a stay and that a court



arrives at a decision that substantial loss was likely to occur if the stay is not granted by performing a delicate balancing act between the right of the respondent to the fruits of his judgment and the right of the applicant on the prospects of his appeal.

13. Similarly, in *Samvir Trustee Ltd vs Guardian Bank Ltd* Milimani HCC 795 of 1997, the court observed that a party has a natural and undoubted right to seek the intervention of the Court of Appeal, and the court should not put an unnecessary hindrance to the enjoyment of that right and that the court should weigh the scales of justice especially if there are exceptional circumstances to sway the discretion of the court in a particular manner.
14. In this application, the inordinate delay of five months has not been explained. Whereas the law has not set the minimum and maximum delay, it all depends on a case-to-case basis. The applicant has not explained why it took her five months to move to court. Second, the loss likely to occur is quantifiable. Third, the change of registration of the title to the estate of the deceased is reversible should the appeal succeed. Third, evidence of new entries in the title register has not been demonstrated by way of an official search. Fifth, the applicant has not offered any security, including costs and or the surrender of the title deed before the court. Sixth there is no proof of substantial loss through cogent and tangible evidence by way of a valuation report and or an agricultural officer's report on the alleged developments belonging to the applicant. Lastly, evidence of any memorandum of appeal before the Court of Appeal has not been attached to show readiness by the applicant to fasttrack her appeal.
15. In the circumstances, I find no sufficient cause why the court should issue stay orders. The application is dismissed with costs.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU

ON THIS 25th DAY OF SEPTEMBER, 2024

In presence of

C.A Kananu

No appearance

HON. C K NZILI

JUDGE

