



Nyaema v County Government of Nyamira & another (Environment & Land Case 45 of 2021) [2024] KEELC 6197 (KLR) (24 September 2024) (Ruling)

Neutral citation: [2024] KEELC 6197 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYAMIRA
ENVIRONMENT & LAND CASE 45 OF 2021**

**JM KAMAU, J
SEPTEMBER 24, 2024**

BETWEEN

NELSON ANYOKA NYAEMA PLAINTIFF

AND

THE COUNTY GOVERNMENT OF NYAMIRA 1ST DEFENDANT

THE HON. ATTORNEY GENERAL 2ND DEFENDANT

RULING

1. Judgement in this case was delivered on 9/11/2023 and the Decree drawn to the effect that: -

Claim for:

- a. An order for eviction against the Defendants servants and/or agents and give vacant possession of parcel No. North Mugirango/bokeiraII/432.
- b. A permanent injunction restraining the Defendants either by himself, servants or agents from re-entering, moving in or any other manner whatsoever interfering with the Plaintiff's parcel described as North Mugirango/bokeiraII/432.

It is hereby ordered that:

- a) The Plaintiff's case is unfounded and consequently, I dismiss the suit with costs.

2. On 24/5/2024, being aggrieved by the said Decree, the Plaintiff/Applicant filed an Application dated 23/5/2024 by way of Notice of Motion asking this court to grant a stay of execution of its Decree pending the determination of *Civil Appeal No. 290 of 2023* in the Court of Appeal, Kisumu a copy of which he attached to the present Application. The Applicant urged this court to grant the Application since failure to do so would render nugatory the Appeal, should the same be successful. He also pleaded that the Application was filed without undue delay which court records show to be about 7 months. The same was supported by an Affidavit of the Applicant sworn on the 23/5/2024. The 1st Defendant



opposed the Application vide her Grounds of Opposition dated 25/7/2024 while the 2nd Defendant did not oppose the same since the orders sought did not affect him.

3. In the Grounds of Opposition dated 25/7/2024 the 1st Respondent urged the court to order that the Application dated 23/5/2024 be dismissed for the same lacks merit, is a non-starter, the prayers sought are fanciful and unwarranted, the Application is in the negative and therefore not legally tenable, speculative and would serve no legitimate interest and that the Application is an abuse of the process of the court which ought to be dismissed.
4. What is the Decree that is sought to be stayed? In his Amended Plaintiff initially dated 13/12/2012 and later amended on 26/2/2014, the Applicant sought for an order of eviction against the Defendants and vacant possession of the parcel of land known as LR. No. North Mugirango/bokeira/432 and a permanent injunction restraining the latter from re-entering, moving into or in any other manner whatsoever from interfering with the said parcel of land. This is the Judgment the Applicant wants stayed. In the first place, the Application came about 7 months after the delivery of Judgment. This cannot be said to be “without delay.” Nonetheless, the delay cannot be said to be unreasonably long. The same is hereby excused. But what would be the effect of granting the stay? The Applicant having failed to secure the Judgment he sought in the Amended plaintiff, granting him the prayers he seeks in the current Application would be tantamount to giving him what was dismissed in the Judgment. He sought orders against the eviction of the Respondents. The same were not granted. What would granting the orders achieve? The court, in its Judgment, concluded that the Applicant’s case is unfounded and consequently dismissed the same. There is therefore nothing to stay and I agree with the 1st Respondent that the Application is in the negative and the same is not legally tenable but an abuse of the process of the court. Any orders granted as prayed for by the Applicant would serve no legitimate interest. The Application dated 23/5/2024 is therefore dismissed with costs.

RULING DATED, SIGNED AND DELIVERED AT NYAMIRA THIS 24TH DAY OF SEPTEMBER, 2024.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Brenda

Plaintiff: In Person

1st Defendant’s Counsel: M/s Nyachiro

2nd Defendant’s Counsel: N/A

