



**Njenga v Wanjohi & another (Environment & Land Case 325 of 2015)  
[2024] KEELC 6142 (KLR) (19 September 2024) (Ruling)**

Neutral citation: [2024] KEELC 6142 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT & LAND CASE 325 OF 2015  
LN MBUGUA, J  
SEPTEMBER 19, 2024**

**BETWEEN**

**RUTH GATHONI NJENGA ..... PLAINTIFF**

**AND**

**GEOFFREY NJUGUNA WANJOHI ..... 1<sup>ST</sup> DEFENDANT**

**KAHAWA WEST INVESTMENT COMPANY ..... 2<sup>ND</sup> DEFENDANT**

**RULING**

1. Before me is the 1<sup>st</sup> defendant's Notice of Motion Application dated 9.7.2024 seeking orders that the firm of Kanyi Kiruchi & co. advocates be allowed to come on record for the applicant, that there be a stay of execution of the judgement delivered on 20.3.2024 and that leave be granted for the applicant to file a notice of appeal out of time.
2. The application is premised on the grounds on the face of the application and on the supporting affidavit of the applicant. He avers that it has taken time to lodge the appeal because his previous advocate informed him that the judgment had not been uploaded in the portal, and it was not until the month of June that he learned that the judgment was against him.
3. The plaintiff/respondent opposes the application vide her replying affidavit dated 25.7.2024 contending that the applicant has not met the three conditions set out under Order 42 rule 6 of the Civil Procedure rules, in particular, that the applicant has not demonstrated the substantial loss he stands to suffer if the orders are not granted. The respondent proposes that the applicant be directed to deposit the decretal amount in a joint interest earning account pending the hearing of the appeal.
4. I have considered all the issues raised. The applicable law on matters stay of execution is Order 42 rule 6 of the Civil Procedure Rules, which has not been cited by the applicant. I will nevertheless consider



the issue on merit and to this end, I make reference to the case of Feisal Amin Jan Mohammed T/A Dunya Forwarders vs Shami Trading Co. Ltd (2014) eKLR, where the court stated that;

“It is trite law therefore that a stay of execution order

is generally granted if the applicant has successfully demonstrated that substantial loss may result to him unless the order is made, that the application was made without unreasonable delay and that the applicant has offered proper security”.

5. On the issue of substantial loss, it is not disputed that a mandatory injunction was issued in the judgment against the defendant, where he was directed to inter-alia, cover up the bore hole. I find that there is an element of substantial loss that may be occasioned upon the applicant if the orders are not granted.
6. On the filing of the Notice of Appeal, I find that the provision of law cited is Section 77 of the Court of Appeal Rules. However, the said provision applies to the filing of the Notice of Appeal in that particular court. However, the Court will still grant the order sought since the validity of the same can still be dealt with at the Court of Appeal.
7. In the end, I grant a conditional stay of execution of the judgment given herein on the following terms:
  1. That the applicant shall deposit the sum of Ksh. 3,000,000 in a joint interest earning account of his advocate and the advocate for the respondent within 30 days from the date of delivery of this ruling.
  2. The applicant shall lodge the Notice of Appeal within 14 days from the date of delivery of this ruling.
  3. The Stay of Execution Orders shall remain in force for a period of 6 months from the date of delivery of this ruling.
  4. The new advocates are allowed to come on record for the applicant.
  5. In the event of none compliance with any conditions set out herein, the order for stay of execution shall lapse.
  6. The applicant is condemned to pay the costs of this application.

**DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2024 THROUGH MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:-**

Machiri holding brief for Nkatha for plaintiff

Kanyi Kiruchi for defendant

Court assistant: Eddel

