



**Kinyua & another v Gichu (Environment and Land Appeal
E013 of 2024) [2025] KEELC 548 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 548 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E013 OF 2024
JO OLOLA, J
FEBRUARY 14, 2025**

BETWEEN

MOSES KARIUKI KINYUA 1ST APPELLANT

EMMANUEL MARUGA WACHIRA 2ND APPELLANT

AND

JAMES KIRAGU GICHU RESPONDENT

RULING

1. By the Notice of Motion dated 15th April, 2024, Emmanuel Maruga Wachira (the 2nd Appellant) prays for an order of stay of execution of the Judgment delivered herein on 7th March, 2024 and any consequential orders arising therefrom pending the hearing and determination of the Appeal.
2. The application is supported by an affidavit sworn by the Appellant and is premised on the grounds, inter alia:
 - a. That the said Appeal has very high chances of success;
 - b. That the Appeal will be rendered nugatory if the Judgment is not stayed.
 - c. That the Applicant will suffer substantial loss, damage, prejudice and injustice if the orders prayed for are not granted as his family shall be evicted from their ancestral land.
 - d. That the Applicant is ready to abide by any conditions the court so orders in granting the orders sought;
 - e. That the Respondent will suffer no prejudice if the said orders are granted;
 - f. It is in the interest of justice that the application be allowed and
 - g. The application has been made without any delay whatsoever.



3. James Kiragu Gichu (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 7th May, 2024, the Respondent avers that the Applicant does not stay on the suit property as purported in the Supporting Affidavit. On the contrary, the Respondent asserts that the Applicant is currently in custody as a result of a criminal case he has been facing. The Respondent avers that he is the one who had been utilizing the suit property all along and more so during the proceedings in the lower court.
4. I have carefully perused and considered the 2nd Appellant's Application as well as the response thereto by the Respondent. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties herein.
5. By this application before the court, the Applicant urges the court to stay execution of the judgment delivered in the Lower Court on 7th March, 2024 together with all consequential orders arising therefrom pending the hearing and disposal of the Appeal filed herein. It is the Applicant's case that the Appeal may be rendered nugatory unless the orders of stay are issued.
6. In respect of an order of stay of execution, Order 42 Rule 6 (2) of the [Civil Procedure Rules, 2010](#) provides as follows:
 - “(2) No order for stay of execution shall be made under sub rule (1) unless-
 - a. The Court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
 - b. Such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.
7. In the case of [Butt vs- Rent Restriction Tribunal](#) (1982) [KLR](#)417, the Court of Appeal held as follows;
 - “1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
 2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the Judge's discretion.
 3. A Judge should not refuse a stay if there are good grounds for granting it merely because in his opinion, a better remedy may become available to the applicant at the end of the proceedings.
 4. The court in exercising its discretion whether to grant or refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
 5. The Court in exercising its power under Order XLI rule 4(2) (b) of the Civil Procedure Rules, can order security upon application by either party or on its own motion. Failure to deposit security for costs as ordered will cause the order for stay of execution to lapse.



8. Applying the above principles to the present case, I note that the Respondent holds a title to the suit property and that he accuses the Appellants of trespassing upon the said property in his suit in the Lower Court. Upon hearing the dispute, the trial court did find that the Appellants were trespassers in the suit property and ordered for their eviction therefrom.
9. As was stated in *RWW -vs-EKW* (2019) eKLR;

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
10. Accordingly, and looking at the circumstances herein, I am persuaded that it would be just and fair to grant a conditional order of stay herein.
11. In the premises, I hereby allow the Motion dated 15th April, 2024 in terms of prayer No. 3 thereof on condition that the Applicant shall deposit the sum of Kshs. 200,000/= in a joint interest earning account in the names of the Learned Advocates representing the parties herein within 30 days from today.
12. In default, the Motion shall stand dismissed with costs.
13. The costs of the application shall otherwise be in the Appeal.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 14TH DAY OF FEBRUARY, 2025

In the presence of:

- a. Firdaus the Court Assistant.
- b. Mr. Karanja Advocate for the Appellant
- c. No appearance for the Respondents

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J.O. OLOLA
JUDGE

