



REPUBLIC OF KENYA



KENYA LAW
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**Mugo v Mureithi (Environment and Land Appeal E002 of 2024)
[2025] KEELC 551 (KLR) (14 February 2025) (Ruling)**

Neutral citation: [2025] KEELC 551 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E002 OF 2024
JO OLOLA, J
FEBRUARY 14, 2025**

BETWEEN

MARY NYAGUTHII MUGO APPELLANT

AND

MARY WAGAKI MUREITHI RESPONDENT

RULING

1. By a Notice of Motion dated 5th June 2024, Mary Nyaguthii Mugo (the Appellant) prays for the following orders: -
 1. Spent
 2. That the Honorable Court be pleased to stay execution of the Decree/Judgment delivered on 14th December, 2023 and the sale of LR. No. Thegenge/Kianjogu/1583 vide a public auction scheduled (for) 6th June, 2024 by the 1st and 2nd Respondents, their agents, servants and anybody claiming through them pending the final disposal of the Appeal.
 3. That the Honorable Court be pleased to exercise its inherent power and (issue) any other order in the interest of justice; and
 4. That the costs of this application be borne by the Respondents.
2. The application is supported by an affidavit sworn by the Appellant on 5th June 2024 and is premised on the grounds that:
 - a. The Judgment was delivered on 23rd December, 2023 and the Appellant subsequently filed this Appeal.



- b. The Appellant is threatened with execution of the said judgment and/or the decree through the sale of the suit property scheduled by public auction at Thika on 6th June, 2024 upon which the Appellant stands to lose his proprietary rights without being heard in the superior court;
 - c. The Appellant has not been served with the requisite notices under the Land Act and/or any evidence of valuation;
 - d. The Appeal raises weighty issues of fact and law which has high chances of success but stands to be rendered nugatory if the orders sought are not granted;
 - e. The Appellant is ready to furnish security for costs as may be determined by this court; and
 - f. The Appellant stands to suffer irreparable loss and/or harm if the orders sought are not granted.
3. Mary Wagaki Mureithi (the Respondent) is opposed to the grant of the orders sought. In her Replying Affidavit sworn on 18th June 2024, as well as Grounds of Opposition dated the same day, the Respondent avers that the Appeal herein has neither been served upon her personally or upon her Advocates on record.
 4. The Respondent avers that the Appellant was duly served with the Notice of the sale by Messrs. Kentrack Auctioneers on 25th March, 2024 and that the Appellant received the same and signed it in the presence of two witnesses after promising to pay the money in two weeks.
 5. The Respondent asserts that the Judgment being a monetary award would not be rendered nugatory and the Appellant has not demonstrated that she stands to suffer substantial loss.
 6. I have carefully perused and considered the Appellant's Application as well as the responses thereto by the Respondent. I have similarly perused and considered the submissions filed herein by the Learned Counsel for the Respondent. I was unable to find any submissions filed by the Appellant on the court record.
 7. By her application before the court, the Appellant urges the court to be pleased to stay execution of the Judgment delivered by the Lower Court on 14th December, 2023 and to halt the sale of all that parcel of land known as Thegenge/Kianjogu/1583 that was scheduled to take place by public auction on 6th June, 2024.
 8. In regard to matters of stay of execution, Order 42 Rule (1) and (2) of the Civil Procedure provides as follows:-
 - “(1) No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order, but the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order, thereon as may seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.
 - (2) No order for stay of execution shall be made under subrule (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.”

9. Arising from the foregoing, in an application such as this, the first issue for determination is whether or not the application has been filed without unreasonable delay. From the material placed before the court, it is evident that the Judgment sought to be stayed was delivered on 13th December, 2023 and not 14th December, 2023 as stated in both the Memorandum of Appeal and the Motion presently before the court.

10. It was also clear that while the Memorandum of Appeal was filed within a month of the delivery of Judgment, the application for stay was not made until some five (5) months later on 5th June, 2024. The Appellant has not bothered to explain that delay but it was clear from a perusal of her Supporting Affidavit that she had been woken up to do so by the Respondent who had moved to have the suit property sold by public auction on 6th June, 2024 to recover the Judgment debt.

11. The second issue that the court ought to determine is whether the Appellant stands to suffer substantial loss unless the order of stay is granted. In her Affidavit filed in support of the application, the Appellant deposes as follows at Paragraph 6 thereof:

“6. If the sale is not stopped I am advised by my advocate on record that I will suffer irreparable damage as I shall lose my right to property as I shall lose proprietary interest in the land without being given an opportunity to be heard by the Superior Court.”

12. I was not however persuaded that the above statement did demonstrate that the Appellant stood to suffer any substantial loss. As Warsame J. (as he then was) stated in *Samvir Trustees Ltd. –vs- Guardian Bank Ltd.* (Nairobi (Milimani) HCCCNo. 795 of 1997:

“... For the applicant to obtain a stay of execution, it must satisfy the court that substantial loss would result if no stay is granted. It is not enough to merely put forward mere assertions of substantial loss, there must be empirical or documentary evidence to support such contention. It means the court will not consider assertions of substantial loss on the face value but the court in exercising its discretion would be guided by adequate and proper evidence of substantial loss ...”

13. At any rate, it was clear from a reading of the impugned Judgment that the same is a monetary decree that cannot be rendered nugatory in the manner purported by the Appellant. A perusal of the said Judgment reveals that the Appellant was ordered to pay a sum of Kshs. 890,000/= together with costs to the Respondent arising from a sale of land agreement that had collapsed. In such a situation, the Appellant was required to demonstrate that if she were to pay the amount to the Respondent, then the Respondent would not be able to refund the money.



14. Considering a similar case in *Equity Bank Ltd. -vs- Taiga Adams Company Ltd.* (2006) eKLR, the court held as follows:

“...The only way of showing or establishing substantial loss is by showing that if the decretal sum is paid to the Respondent – that is execution is carried out – in the event the appeal succeeds, the Respondents would not be in a position to pay – reimburse – as she/he is a person of no means. Hence, no such allegation is established by the Appellant.”

15. In the circumstances herein I was not persuaded that the Appellant had demonstrated that she stands to suffer substantial loss if the stay of execution orders are not issued.

16. In the premises, I did not find any merit in the Motion dated 5th June 2024. The same is dismissed with costs to the Respondent.

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

J.O. OLOLA

JUDGE

In the presence of:

Firdaus the Court Assistant.

No appearance for the Appellant

Ms Muthui Advocate for the Respondents

