



**Wanjiku v Ng'ang'a (Environment & Land Case 57 of 2015)
[2024] KEELC 7477 (KLR) (31 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7477 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 57 OF 2015
AA OMOLLO, J
OCTOBER 31, 2024**

BETWEEN

MARY WANJIKU APPLICANT

AND

PAULINE MUKUHI NG'ANG'A RESPONDENT

RULING

1. For determination are the Defendant/Applicant's two application dated 13th May, 2024 and 20th May, 2024 both seeking for orders of temporary injunction and or stay of execution of the decree pending the determination of his appeal lodged vide notice of appeal dated 6th May, 2024.
2. The application is premised on the grounds inter alia;
 - a. That the deceased is the legal registered owner of suit the property.
 - b. That the Applicant has lived on the suit property together with the deceased for many year without any interference by the Respondent.
 - c. That the Applicant and the deceased have children together, who now reside in the suit property, which is the only home the Applicant and the children know.
 - d. That by a judgment delivered on 25th of April, 2024, the High Court directed that Applicant be restrained from remaining, entering, occupying, residing on or otherwise claiming title over the suit property.
 - e. That the Applicant being aggrieved by the judgment intends to file an appeal to this Honourable Court which appeal has a high chance of success.
3. The application is further supported by the affidavit sworn by the Applicant Mary Wanjiku. She deposed that her appeal has reasonable chance of success, unless the stay orders are granted, execution



is likely to take place any time. That if the Respondent proceeds to dispose of and transact over the suit property, she shall be permanently deprived of the suit property. The Applicant stated that she is will to furnish security.

4. The Plaintiff/Respondent filed a replying affidavit dated 10th June, 2024 in opposition to the application. She deposed to writing a letter dated 17th May, 2024 addressed to the occupant of the suit property expressing her intention to take possession. That upon visiting the property, she met the lady who introduced herself as Cynthia Njeri Njoroge of phone No. 0701636042. She confirmed the number belonged to her through an Mpesa message sent.
5. Consequently, the Respondent argues that the Applicant is not in possession. She also learnt from their discussions with Cynthia that the occupant was paying rent of Kshs.70k per month to the Applicant yet the Applicant had in the course of the proceedings stated the property was not rented. That this disentitles the Applicant from the reliefs sought.
6. The Respondent added that the judgment awarded her 50% of mesne profits. Thus she is entitled to 50% of any rental income receivable from the suit promises. She avers that since the Applicant has not provided any account or payments from the suit property, she has not met the conditions for grant of stay orders.
7. Both parties filed their written submissions which I have taken time and read. Both parties agree that the grant of stay of execution is governed by the provisions of order 42 rule 6 (2). The Respondent submitted that one of the conditions to be met is that the appeal must be arguable. In answer, this court is not required to determine the suitability of the appeal. Order 42 rule 6 subrule 4 states thus;

“(4) For the purposes of this rule an appeal to the Court of Appeal shall be deemed to have been filed when under the Rules of that Court notice of appeal has been given.”
8. On substantial loss, the Respondent has no interest in the suit property. From the proceedings conducted, the Defendant is claiming a stake when she argued that she lived with the Karuge – deceased on the suit property. The plaintiff confirms through her replying affidavit that there is a Cynthia Njeri Njoroge paying rent of Kshs.70,000 to the Defendant/Applicant every month.
9. Further at paragraph 35 of the judgment, I found the Defendant denied interest through the deceased. This court rendered herself that the Respondent is entitled to 50% of the suit property meaning the other half share remains the property of the deceased. It is therefore incorrect to submit that the Applicant has no interest in the suit property. If the orders are not granted, the loss of income is not trivial.
10. Although the Respondent argued that she has waited for 9 years to get the judgment and should be allowed to enjoy the fruits. Her rights must be balanced with the Applicants right to pursue the matter before the Court of Appeal. See the holding in the case of Jason Ngumba Kagu & 2 Others Vs. Intra Africa Assurance Co. Ltd (2014) eKLR thus;

“The possibility that substantial loss will occur if an order of stay of execution is not granted is the cornerstone of the jurisdiction of court in granting stay of execution pending appeal under Order 42 rule 6 of the Civil Procedure Rules. The court arrives at a decision that substantial loss is likely to occur if stay is not made 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.”



11. The Applicant pleaded and submitted that it was willing to furnish security as the court deems just in the circumstances. She did not deny she was receiving rental income from the person identified as Cynthia Njoroge. Therefore, I direct that the entire monthly rent rental income shall be deposited in an interest account to be opened in the joint names of the advocates for parties. The said account to be opened within 30 days hereof. The rental deposits commences in December, 2024 until the Applicants appeal is determined.
12. In conclusion, the application for stay is granted. Each party to bear their costs of the appeal.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 31ST DAY OF OCTOBER, 2024

A. OMOLLO

JUDGE

