



**Mwirichia v Muraa (Environment and Land Appeal E054 of 2014)
[2024] KEELC 7322 (KLR) (30 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7322 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E054 OF 2014
CK NZILI, J
OCTOBER 30, 2024**

BETWEEN

WILSON KIRIMI MWIRICHIA APPLICANT

AND

STANELY GITONGA MURAA RESPONDENT

RULING

1. What is before the court for determination is an application dated 5.8.2024, seeking for stay of execution of the court orders dated 26.7.2024. The grounds on the face of the motion and further grounds adduced in the affidavit sworn by Wilson Kirimi Mwirichia are that; the applicant is the owner of L.R No. Abuthuguchi/ Mariene/1393, the suit parcel; what was before the trial court were allegations of fraud on the validity of the title deed; the appeal has a high chance of success; the suit is not res judicata; execution will occasion great prejudice; the appeal will be rendered nugatory if the ownership changes and it is in the interest of justice to grant orders sought.
2. The applicant has also averred that the title to the suit parcel was issued pursuant to orders in Githongo ELC No. 31 of 2015, which was a separate cause of action. Lastly, the applicant avers that he is willing to deposit Kshs.30,000/= as security for costs. A copy of the title deed is annexed as W.K. "1".
3. Opposing the motion, the respondent filed a replying affidavit sworn on 17.9.2024 by Stanley gitonga muraa. He averred that as the decree-holder in ELC No.31 of 2015, he has taken possession and occupation of the suit parcel; the applicant is out to the defeat ends of justice; he does not intend to transfer the suit parcel to third parties; and lastly that the security of costs offered was insufficient. He annexed a copy of the title deed as SGM "I."
4. Through submissions dated 2.10.2024, the applicant relying on Thika Civil Appeal No. E265 of 2023 Chege vs Gachora (1994) eKLR, submits that the subject title deed risks being transferred to third parties, hence irreparably affecting the substratum of the appeal, in the event that the appeal succeeds.



5. The applicant further submits that he will suffer substantial loss, harm, and damage, if the title deed is canceled and transferred to a third party. On security for costs, Under Order 42 Rule 6 of the Civil Procedure Rules, the applicant submits that it is not necessary, since this is not a money decree. The applicant also submits that the application was filed without unreasonable delay, within 11 days after the lower court judgment was delivered.
6. On the other hand, the respondent relies on a written submission dated 27.9.2024. It is submitted that the application is in contravention of Order 22 Rule 22(1) of the Civil Procedure Rules and, therefore, does not meet the provisions of Order 42 Rule 6 (2), (a) & (b) of the Civil Procedure Rules.
7. To grant or not to grant stay orders is a discretionary power of the court that is to be exercised judiciously. An applicant must demonstrate substantial loss unless the order is made. The application has to be made without unreasonable delay. A security for the due performance of the decree or order, as may ultimately be binding on the applicant, has to be availed or offered. See *Kenya Shell Limited vs Benjamin Karuga Kibiru & Ruth Wairimu Karuga* [1986] KECA 94 (KLR), *Arun C Sharma vs Ashana Raikundalia t/a A Raikundalia & Co Advocates & 2 Others* [2014] KEHC 2430 (KLR) and *James Wangalwa & Another vs Agnes Naliaka Cheseto* [2012] KEHC 1094 (KLR).
8. Applying the criteria set in the cited case law, the applicant has not demonstrated the substantial loss that he is likely to suffer, given that the title deed is already in the name of the respondent. Further, the respondent, who is also in occupation, states that he does not intend to dispose of the substratum of the appeal, and the applicant is out to defeat the ends of justice. Mere apprehension or fear of execution does not amount to substantial loss. Execution is a lawful process where the successful party should enjoy the fruits of his judgment unless there is sufficient cause to stop the process. See *Wangalwa vs Cheseto* (supra). The respondent terms the offer of KShs.30,000/= as security for costs as insufficient. See *Butt vs Rent Restriction Tribunal* (1982) KLR 417. .
9. The applicant has not disputed the facts in the replying affidavit showing that the respondent already occupies the substratum of appeal and is not in any danger of dissipation. Substantial loss is the cornerstone of stay and must be substantiated with cogent material. It is not enough to allege execution is underway without showing how the subject matter will change to render the appeal nugatory. I find no reasons advanced why stay orders should be issued. The application is as a result of this, dismissed with costs to the respondent.
10. Lower court file be availed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 30TH DAY OF OCTOBER, 2024

In presence of

C.A Kananu

Kaba for Mwiti appellant

Ms. Mugo for respondent

HON. C K NZILI

JUDGE

