



**Mwangi & another v Njoroge (Environment and Land Appeal
E018 of 2024) [2025] KEELC 214 (KLR) (30 January 2025) (Ruling)**

Neutral citation: [2025] KEELC 214 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL E018 OF 2024**

**JM KAMAU, J
JANUARY 30, 2025**

BETWEEN

STEPHEN NJENGA MWANGI 1ST APPELLANT

STEPHEN NJENGA NDINGURI 2ND APPELLANT

AND

HEZEKIAH MUHIA NJOROGE RESPONDENT

RULING

1. Having granted the firm of Waichungo Martin & Co. Advocates leave to come on record on behalf of the Appellants what remains to be determined in the Application dated 9/10/2024 is prayer No. 4.

That pending the hearing and determination of the Applicant's Appeal, there be a stay of execution of the Judgment delivered on 25/9/2024, Decree and all consequential Orders coming therefrom in O'Kalou P.M.C. ELC No. E004 of 2024.

2. The Grounds upon which the Application is brought are that there is an eviction Decree and should the same be executed, the Appellants will be rendered homeless and hence suffer substantial loss, their maize crop destroyed and that no prejudice will visit the Respondent. The Appellants are ready to provide security for the granting of the orders sought.

3. On 18/11/2024 the Respondent was granted 7 days to file his response but more than two (2) months later, he has failed to do so. As I held in the case of Nyamira ELC Case No. 92 of 2021 *Shadrack Nyaberi Mwakae VS David M. Omoganda Ong'era*.

“.....it is important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question or of the failure to do so. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. It is



important that the Court takes into consideration the likely effect of granting the stay on the proceedings in question or of the failure to do so. In other words, the Court ought to weigh the likely consequences of granting the stay or not doing so and lean towards a determination which is unlikely to lead to an undesirable or absurd outcome. What the Court ought to do when confronted with such a situation is to consider the twin overriding principles of proportionality and equality which are aimed at placing the parties before the Court on equal footing and see where the scales of justice lie considering the fact that it is the business of the court, so far as possible, to ensure that any transitional motions before the Court do not render nugatory the ultimate end of justiceThe interest of the Court in stay of execution in the case of a non-monetary Decree such as this one is usually meant to serve the purpose of preserving the subject matter only so that whoever succeeds in the Appellate Court, will find the property still intact. The court therefore needs to be more cautious and interrogate the consequences of failure to preserve the subject matter. The orders issued in this case should therefore be in rem and geared towards preserving the property itself until the outcome of the intended Appeal. It would turn the entire proceedings herein and in the appellate court into an academic exercise and mockery and later burden this court and/or the appellate court with a flurry of Applications. It is of paramount importance to ensure realization of the ultimate winners' fruits of litigation and that nothing complicates the matter after the final Judgment.....”

4. Taking all relevant factors into account and in order not to render the intended appeal illusory while at the same time securing the interests of the successful Plaintiff, I grant a stay of execution of the Decree dated 25/9/2024 in favour of the Applicant. The costs of the Application are to abide the results of the Appeal.
5. This matter must be heard within the next 60 days from the date hereof.

RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 30TH DAY OF JANUARY, 2025.

MUGO KAMAU

JUDGE

In the Presence of: -

Court Assistant: Eric.

N/A for the Appellants

Mr. Mugane for the Respondent

