



**Njuguna & another v Wamugi & 2 others (Environment and Land Appeal
61 of 2023) [2024] KEELC 7167 (KLR) (24 October 2024) (Ruling)**

Neutral citation: [2024] KEELC 7167 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA
ENVIRONMENT AND LAND APPEAL 61 OF 2023
YM ANGIMA, J
OCTOBER 24, 2024**

BETWEEN

KINUTHIA KANYONYO NJUGUNA 1ST APPELLANT

ESTHER WAMBUI MWAURA 2ND APPELLANT

AND

JEREMIAH MUUTI WAMUGI 1ST RESPONDENT

THE HON ATTORNEY GENERAL 2ND RESPONDENT

DISTRICT LAND REGISTRAR NYANDARUA 3RD RESPONDENT

RULING

A. Appellants' Application

1. By a notice of motion dated 11.02.2024 brought under Order 42 rule 6 of the Civil Procedure Rules, 2010 (the Rules) and all other enabling provisions of the law the Appellants sought a stay of execution of the judgment and decree of the trial court dated 14.02.2023 in Nyahururu CM ELC No.251 of 2018 pending the hearing and conclusion of the appeal. In the alternative, the Appellants sought maintenance of the status quo which prevailed during the hearing of the suit before the trial court, pending the hearing and determination of the appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit jointly sworn by the Appellants on 11.02.2024 and the annexures thereto. The Appellants contended that being aggrieved by the judgment of the trial court they filed the instant appeal. They contended that they stood to suffer substantial loss if they were evicted from the suit property during the pendency of the appeal. It was their case that the Respondents shall not suffer any loss or prejudice if the orders sought were granted. They also indicated willingness to provide security for due performance of the decree which may ultimately be binding upon them.



B. Respondents' Response

3. The 1st Respondent filed a replying affidavit on 02.04.2024 in opposition to the application. It was pleaded that the Appellants had not satisfied the requirements for the grant of a stay of execution under Order 42 rule 6 of the Rules. In particular, it was contended that the Appellants had failed to demonstrate what substantial loss, if any, they stood to suffer in the absence of a stay. It was also contended that there was unreasonable delay on the part of the Appellants in filing the instant application which had not been explained. As a result, the court was urged to dismiss the application with costs. However, the Attorney General did not file any response on behalf of the 2nd and 3rd respondents.

C. Directions on Submissions

4. When the application was listed for inter partes hearing, it was directed that the same shall be canvassed through written submissions. The parties were consequently granted timelines within which to file and exchange their respective submissions. The record shows that the Appellants' submissions were filed on 14.06.2024, whereas the 1st Respondent's were filed on 05.07.2024. However, the Attorney General did not file any submissions for the 2nd and 3rd Respondents.

D. Issues for Determination

5. The court has perused the Appellants' notice of motion dated 11.02.2024, the replying affidavit in opposition thereto as well as the material on record. The court is of the view that the following key issues arise for determination herein:
 - a. Whether the Appellants have satisfied the principles for the grant of a stay pending appeal.
 - b. Whether the Appellants are entitled to an order for maintenance of the status quo ante.
 - c. Who shall bear costs of the application.

E. Analysis and Determination

- a. Whether the Appellants have satisfied the principles for the grant of a stay pending appeal
6. The court has considered the material and submissions on record on this issue. Whereas the Appellants contended that they had satisfied the requirements for the grant of a stay pending appeal, the 1st Respondent contended otherwise. It was the 1st Respondent's submissions that execution of a decree does not necessarily result in substantial loss in the absence of special circumstances.
7. Order 42 rule 6(2) of the Rules on stay of execution stipulates as follows:

“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.”



8. The court has noted from the material on record that the Appellants contended that they shall suffer substantial loss because they were in occupation of the suit property and they would suffer seriously if they were to be evicted before their appeal was heard and determined. The court is satisfied on the basis of the material on record, that the Appellants have some structures on the suit property and that they are undertaking some economic activities thereon. In the premises, the court is of the view that the Appellants shall suffer substantial loss unless a stay of execution of the judgment and decree of the trial court is granted. It is evident that one of the orders granted against the Appellants in the judgment is an eviction order.
9. The court has considered the issue of delay in filing the instant application. It is evident from the record that the decree of the trial court was passed on 14.02.2023 whereas the application for stay dated 11.02.2024 was filed on 15.03.2024, that is, more than one year after judgment. The court has noted that the Appellants have not rendered any reasonable explanation for the substantial delay. The court is thus entitled to find and hold that the delay was inordinate and unreasonable. The court is further of the opinion that such inordinate delay would disentitle the Appellants from an order of stay pending appeal.
10. On the question of security, the court is of the view that it is in the discretion of the court to order the provision of a suitable security for due performance of the decree should the Appellants' appeal ultimately fail. Since the court has taken the view that the Appellants are not entitled to a stay in the instant application, then the question of provision of security does not really arise.
 - b. Whether the Appellants are entitled to an order for maintenance of the status quo ante
11. It is evident from the material on record that the Appellants sought a stay order so that they may continue in occupation of the suit property. The status quo order sought in the alternative was obviously sought to achieve the same purpose. Having failed to obtain a stay of execution of the decree, the court is of the view that the Appellants are not entitled to a status quo ante pending the hearing and determination of the appeal.
 - c. Who shall bear costs of the application
12. Although costs of an action or proceeding are at the discretion of the court, the general rule is that costs shall follow the event in accordance with the proviso to Section 27 of the *Civil Procedure Act* (Cap 21). A successful party should ordinarily be awarded costs of an action unless the court, for good reason, directs otherwise. See *Hussein Janmohamed & Sons –vs- Twentsche Overseas Trading Co. Ltd* [1967] EA 287. Since the appeal is pending hearing and determination the court is of the view that costs should abide the outcome of the appeal. As a consequence, costs of the application shall be costs in the appeal.

F. Conclusion and Disposal Order

13. The upshot of the foregoing is that the court finds and holds that the Appellants have failed to satisfy the requirements for the grant of a stay of execution of the decree pending appeal, or the alternative prayer for maintenance of the status quo ante. As a consequence, the court makes the following orders for disposal of the Appellants' application:
 - a. The notice of motion dated February 11, 2024 be and is hereby dismissed in its entirety.
 - b. The appeal shall be mentioned on January 21, 2025 to confirm the filing of the record of appeal.
 - c. Costs of the application shall be costs in the appeal.

It is so decided.



RULING DATED AND SIGNED AT NYANDARUA THIS 24TH DAY OF OCTOBER, 2024 AND DELIVERED VIRTUALLY VIA MICROSOFT TEAMS PLATFORM.

In the presence of:

Mr. Kinyanjui for the Appellant

Mr. Waweru for the 1st Respondent

N/A for the 2nd & 3rd Respondents

C/A - Carol

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Y. M. ANGIMA

JUDGE

