



Waime v Mwangi & another; Anusu (Third party) (Environment & Land Case 1062 of 2012) [2024] KEELC 13408 (KLR) (22 November 2024) (Ruling)

Neutral citation: [2024] KEELC 13408 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 1062 OF 2012
LN MBUGUA, J
NOVEMBER 22, 2024**

BETWEEN

MARY NYAMBURA WAIME PLAINTIFF

AND

ERIC MUTUNGA MWANGI 1ST DEFENDANT

JANE MUTHONI MUTUNGA 2ND DEFENDANT

AND

ROSE ASALACHE ANUSU THIRD PARTY

RULING

1. Before me is the Plaintiff's Notice of Motion dated 3.10.2023 seeking orders for reinstatement of their application dated 21.1.2024 which was dismissed on 2.10.2024. It is argued that the dismissed application was filed by the previous advocates for the applicants, Macharia Gakaria and Associates seeking a stay of execution of the judgment, but there was no proper handing over of the file between the advocates leading to the dismissal of the said application. The applicants contend that they stand to suffer irreparable damage if the application of 27.1.2024 is not heard on merits as they will be removed from the seat of justice.
2. In their oral submissions, the applicants aver that the advocates for the respondent ought to have disclosed to the court that their previous advocates were no longer on record. On this point, reference was made to the case of Serem *¶ 3 Others v Kosgei E002 of 2024*. The applicants also cite the case of Hawkin Cooperation (Owner of M V Cairos) v. Africa Marine and General Engineering Co. Ltd 2004 to buttress the point that the subject matter is a valuable commodity, being land. They further stated that no prejudice will be suffered by the respondent if the application is allowed. Adding that they thought the matter was either at Thika court or at the Court of Appeal.



3. The defendant opposes the application vide the Replying Affidavit of the 1st Respondent dated 5.11.2024 where it is argued that the applicants were aware of this application since the proceedings can be checked in the online portal system, and that no explanation has been proffered as to why the current advocates did not peruse the file.
4. It is further argued that the applicants appeal was struck out on 10.7.2024. Still, the applicant has filed another application at the Court of Appeal dated 30.7.2024 seeking a stay of execution as well as the reinstatement of the Appeal matter.
5. In their oral submissions, the respondents contend that the applicant is merely trying to delay the execution proceedings.
6. I have considered all the arguments raised herein. The records indicate that judgment was delivered way back on 16.2.2018 in which plaintiff's case was dismissed with costs. She appealed, but the appeal No. 296 of 2019 was dismissed on 10.7.2024. She has filed an application to reinstate the said appeal and for stay of execution in the Court of Appeal.
7. Meanwhile, the plaintiff filed an application dated 27.1.2024 seeking a stay of execution of the judgment delivered herein which application was dismissed on 2.10.2024 for want of prosecution. The plaintiff has now filed an application dated 4.10.2024 seeking an order for reinstatement of the earlier application dated 27.1.2024.
8. I find that way back on 29.7.2024, it was brought to the attention of the court that the appeal was dismissed. There is no evidence to indicate that there is any substantive appeal that is active. And even if it was, this court would be functus officio as parallel proceedings should not be allowed to run before this court and at the Court of Appeal. After all, the applicant does admit that she has lodged an application for STAY in the Court of Appeal.
9. Further, it is noted that judgment was delivered 7 years ago in year 2018!. It is not tenable that this court should be dealing with issues of Stay of the said judgment 7 years down the line as this flies against the principles of expeditious disposal of cases and finality of proceedings. See *Lawrence Kinyua Mwai v Nyariginu Farmers Co Ltd & Another* [2019] eKLR.
10. I must add that the respondents counsel was not obligated to inform the court on 2.10.2024 that the applicants had a new advocate in view of the fact that the notice of change of advocates was filed on 3.10.2024 after the dismissal of the application. It is also noted that the applicants advocates have not complied with the provisions of Order 9 rule 9 of the Civil Procedure rules as no leave was sought to represent the plaintiff after judgment, thus the application itself is not properly presented before this court.
11. In the end, I find that the application dated 3.10.2024 is not merited, the same is hereby dismissed with costs to the respondent.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 22ND DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

M/s Sigei for Plaintiff

Kairaria for Defendant Respondents



Court Assistant: Vena

