



**Ciang’ombe v Njagi & 3 others (Environment & Land Miscellaneous Case E007 of 2024) [2024] KEELC 13291 (KLR) (20 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13291 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT CHUKA  
ENVIRONMENT & LAND MISCELLANEOUS CASE E007 OF 2024**

**CK YANO, J**

**NOVEMBER 20, 2024**

**BETWEEN**

**EUSTAE MUGENDI CIANG’OMBE ..... PLAINTIFF**

**AND**

**GITIRA NJAGI ..... 1<sup>ST</sup> DEFENDANT**

**NJERU NJAGI ..... 2<sup>ND</sup> DEFENDANT**

**GACII NJAGI ..... 3<sup>RD</sup> DEFENDANT**

**MAUKI NJAGI ..... 4<sup>TH</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion application dated 19<sup>th</sup> June, 2024 brought under Section 1A, 1B, 3A and 63(e) of the *Civil Procedure Act*, Order 42 rule 6 and Order 51 rule 10 of the *Civil Procedure Rules* and all other enabling provisions of the law, the Plaintiff/Applicant is seeking the following orders:
  1. Spent
  2. That this Honourable Court be pleased to stay the orders issued by D.A Ocharo in his ruling delivered on 28<sup>th</sup> March, 2024 in ELC No. 16 of 2020 pending the hearing of the intended appeal.
  3. That this Honourable Court be pleased to stay the Notice to show cause why execution should not issue issued on 10<sup>th</sup> day of June 2024 by D. A. Ocharo in ELC No. 16 of 2020 pending the hearing of the intended appeal herein.
  4. That costs of this application be provided for.
2. The application is based on the grounds set out in the face of the Motion and supported by the affidavit of Eustus Mugendi Cian’gombe sworn on 19<sup>th</sup> June, 2024.



3. The applicant avers that Hon. D. A. Ocharo delivered a ruling in ELC No. 16 of 2020 in which he allowed an application for stay of execution of the decree therein on condition that the applicant deposits the sum of Kshs. 78,975/= in court within 21 days, in default the execution to proceed. That the said application was seeking orders of stay of the judgment delivered on 19<sup>th</sup> August, 2021 by Hon. N. Kahara and the certificate of costs dated 4<sup>th</sup> May, 2022 pending the hearing and determination of that application and the intended appeal.
4. The applicant states that he stands to suffer irreparably if the orders in the said ruling are not stayed since he does not have money to deposit, thus causing him to lose his share of land in the estate of Njagi Mugwa M'Kanamba alias Njagi Mugwa at Makamora Village, Igambang'ombe Sub-Location, Kamahindi Location, Igambang'ombe Division as they are having family disputes. That the trial magistrate proceeded to issue a Notice to show cause why execution should not issue on 10<sup>th</sup> June, 2024 whereas there is a pending matter in Chuka High Court Misc. Application No. E007 of 2023 seeking leave to appeal against the decision of the trial court delivered on 19<sup>th</sup> August, 2021. That if stay of execution is not granted, substantial loss may result to the applicant as once he developed and has been cultivating the suit property where by he may be evicted anytime therefrom, and in default of which any execution may be conducted and may not be recoverable. It is the applicant's contention that the appeal herein has high chances of success and if execution is carried out, the appeal will be rendered nugatory. That there has been no delay in bringing this application.
5. In his supporting affidavit, the applicant avers inter alia, that he is a beneficiary in the estate of Njagi Mugwa M'Kanamba alias Njagi Mugwa (deceased). That the respondents are also beneficiaries to the said estate.
6. The applicant states that she filed ELC case No 16 of 2020 in the subordinate court claiming that the Land Adjudication Officer, Meru South and Chairman Land Kamahindi Location be ordered to register the suit land in the name of the deceased as well as an order for provision of security by the OCS Kathwana Police Station due to family disputes. That the application was heard and judgment was delivered on 19<sup>th</sup> August, 2021 by the trial court dismissing the suit. That the applicant then filed an application seeking orders of stay of the said judgment and certificate of costs pending the hearing of the intended appeal, but in the impugned ruling, the trial court granted conditional stay, hence this application.
7. The respondents did not put in any response either within the time granted by the court or at all.
8. Having considered the application, the main issue for determination is whether the court should grant stay of execution of orders the lower court issued on 28<sup>th</sup> March, 2024 and 10<sup>th</sup> June, 2024 as sought by the applicant pending the hearing and determination of the appeal.
9. An application for stay invokes the discretionary powers of this court under Order 42 Rule 6 (1) of the [\*Civil Procedure Rules\*, 2010](#) that empowers the court to stay execution, either of its judgment or that of a court whose decision is being appealed from, pending appeal. The conditions to be met before stay is granted are provided for under Rule 6(2) of Order 42 and states 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.”
10. The Court of Appeal in *Butt Vs. Rent Restriction Tribunal* [1982] KLR 417 gave guidance on how a court should exercise discretion and held that: -
- “ 1. The power of the court to grant or refuse an application for a stay of execution is a discretionary power. The discretion should be exercised in such a way as not to prevent an appeal.
  2. The general principle in granting or refusing a stay is; if there is no other overwhelming hindrance, a stay must be granted so that an appeal may not be rendered nugatory should that appeal court reverse the judge’s discretion.
  3. A judge should not refuse a stay if there are good grounds for granting it merely because on his opinion, a better remedy may become available to the applicant at the end of the proceedings.
  4. The court in exercising its discretion whether to grant [or] refuse an application for stay will consider the special circumstances of the case and unique requirements. The special circumstances in this case were that there was a large amount of rent in dispute and the appellant had an undoubted right of appeal.
  5. The court in exercising its powers under Order XLI rule 4(2) (b) of the *Civil Procedure Rules*, can order security upon application by either party or on its own motion. Failure to put security for costs as ordered will cause the order for stay of execution to lapse.”
11. Substantial loss is a factual issue which must be raised in the supporting affidavit and further supported by evidence. The Applicant stated that they agreed with the Respondent that he gives them his land in order to recover the sum of Kshs. 78,975/= since he had no money to pay them. That he is now aggrieved and dissatisfied with the orders given by the Lower Court since he is unable to deposit the sum of Kshs. 78,975/= due to lack of funds. That he has now been threatened with eviction by the respondents who want him vacate the suit property.
12. In the case of *Machira T/A Machira & Co. Advocates Vs. East Africa Standard* [2002] eKLR, it was held that an applicant’s ground for substantial loss must be specific and detailed as it is not enough merely stating that substantial loss will result or that if the appeal is successful, it will be rendered nugatory.
13. Order 42 rule 6 requires the provision of security as a pre-condition for allowing a request to stay execution. The applicant cannot have a blanket stay of execution without providing reasonable security. The applicant has not stated that he is willing to provide alternative security from that granted by the Learned Trial Magistrate and has conveniently evaded that issue, yet he is seeking the discretion of this court under Order 42 rule 6 of the *Civil Procedure Rules*. In my view, the trial court rightly exercised its discretion in allowing the applicant’s application and granting the applicant conditional stay. This court has not been shown that the trial court’s discretion was exercised arbitrarily.
14. In the result, it is my finding that the Notice of Motion application dated 19<sup>th</sup> June, 2024 has no merit and the same is hereby dismissed. Since the respondents did not file a response, I order that each party bears their own costs.



15. It is so ordered.

**DATED, SIGNED AND DELIVERED AT CHUKA THIS 20<sup>TH</sup> DAY OF NOVEMBER, 2024.**

Court Assistant – Mwangi

No appearance for Plaintiff/Applicant

No appearance for Defendants/Respondents

**C. K. YANO**

**JUDGE**

