



**Meria & another v County Government of Kiambu; Land Registrar
(Interested Party) (Environment & Land Case E118 of 2020)
[2024] KEELC 13357 (KLR) (18 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13357 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT THIKA
ENVIRONMENT & LAND CASE E118 OF 2020**

**JG KEMEI, J
NOVEMBER 18, 2024**

BETWEEN

FRANCIS NJUGUNA MERIA 1ST PLAINTIFF

HELLEN NYAWIRA NJUGUNA 2ND PLAINTIFF

AND

COUNTY GOVERNMENT OF KIAMBU DEFENDANT

AND

LAND REGISTRAR INTERESTED PARTY

RULING

1. The Judgment in this case was delivered on 25/5/2023 dismissing the Plaintiffs/Applicants’ suit and allowing the 1st Defendant/Respondent’s counter claim with costs.
2. The Applicants/Plaintiffs have filed the instant Application dated 16/6/2023 expressed under Articles 47, 48 and 50 Constitution of Kenya, Sections 1A, 1B and 3A of the *Civil Procedure Act* and Order 42 rule 6 of the Civil Procedure Rules. In the main the Applicants crave for orders of stay of execution of the aforesaid Judgement pending the hearing and determination of their appeal.
3. The Application is based on the grounds thereat which are rehashed in the Supporting affidavit of even date of Francis Njuguna Meria, the 1st Applicant. He deposed that he is dissatisfied with the Judgment of this Court which awarded the Respondents the suit property namely LR No. 13537/41 and has thus filed an appeal as evidenced by the Notice of appeal annexed as ‘FM1’. That the Respondent is likely to execute the Judgment decree in his favor at any time unless the stay of execution order is granted. That unless such stay is granted his appeal which has high chances of success, will be rendered



- nugatory and result in irreparable loss in light of the suit property value stated to be in excess of Kshs. 100 Million. That it is in the interest of justice that the Court allows the Application.
4. The Application is not opposed. The Court will therefore determine the Application on merits based on the material placed before it.
 5. On 20/6/2023 directions were issued for parties to canvass the Application by way of written submissions.
 6. The Applicants through the firm of Gregory Ndege & Associates Advocates filed two sets of submissions dated 26/7/2023 and 27/11/2023. The Respondents did not file any submissions.
 7. Outlining the background of the suit and the resultant Judgment, the Applicants rehashed the provisions of Order 42 rule 6 of the Civil Procedure Rules on stay of execution pending appeal. They posited that they have met the criteria for stay of execution as prayed. That they will suffer substantial loss by virtue of cancellation of their title; a new lease certificate would be issued to the Respondent; eviction will ensue as well as demand for costs. That they will suffer grave damages occasioned by loss of possession of the suit property; potential change of user of the suit land that their dispossession will lead to breach of contract to a third-party purchaser who already acquired interests on the suit land.
 8. Further it was argued that the Application was timeously filed and the suit land is adequate security for the appeal. Reliance was placed on the decision of Nicholas Stephen Okaka & Another Vs. Alfred Waga Wesonga [2022] eKLR.
 9. The germane issue for determination is whether the Application is merited.
 10. The legal provisions for stay of execution pending appeal are anchored in Order 42 rule 6 (1) & (2) of the Civil Procedure Rules that;-
 1. No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the Court appealed from may order but, the Court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the Application for such stay shall have been granted or refused by the Court appealed from, the Court to which such appeal is preferred shall be at liberty, on Application being made, to consider such Application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the Court from whose decision the appeal is preferred may apply to the appellate Court to have such order set aside.
 2. No order for stay of execution shall be made under subrule (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.”
 11. The jurisdiction to grant stay of execution lies at the discretion of this Court and is exercised on the basis of sound and settled principles, not arbitrarily or capriciously on a whim or in consideration of any extraneous matters. In the case of Butt Vs. Rent Restriction Tribunal [1982] KLR 417 the Court of Appeal gave guidance on how a Court should exercise discretion in an Application for stay of execution and held that: -
 1. The power of the Court to grant or refusal an Application for a stay of execution is a discretion of power. The discretion should be exercised in such a way as not to prevent an appeal.



2. The general principle is 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. (sic) (trial Court Judgement).
 3. A Judge should not refuse a stay if there is a good ground for granting it merely because in his opinion a better remedy may be available to the Applicant at the end of the proceedings.
 4. 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 of costs as ordered with cause the order for stay of execution to lapse.”
12. Has the Applicants satisfied the conditions set in Order 42 rule 6 (2) of the Civil Procedure Rules above? The Applicants contend that the Respondent may execute the Judgment against them which would entail their dispossession of the suit property and subsequent breach of contract with a third party. No evidence was tendered to support these averments and even if there was, it is trite that execution on its own is does not amount to substantial loss because it is a lawful process. See the case of James Wangalwa & Another Vs. Agnes Naliaka Cheseto [2012] eKLR. In my view the Applicants have not demonstrated the substantial loss they stands to suffer if the order of stay is not granted.
 13. On whether the Application was timeously filed, I note that the Application was filed on 18/6/2023, 24 days after delivery of the impugned Judgment in which event the same cannot be said to be inordinate.
 14. I have sighted the Notice of Appeal which preceded the instant motion. It is sufficient evidence to show that the appellate jurisdiction of the Court of Appeal has been invoked. The notice was filed over a year and 5 months ago. The Court is not been appraised of the current position of the aforesaid appeal or the execution of the said Judgement.
 15. For the above reasons the Application is declined.
 16. There be no order as to costs.

DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 18TH DAY OF NOVEMBER, 2024 VIA MICROSOFT TEAMS.

J G KEMEI

JUDGE

Delivered online in the presence of;

Odhiambo for 1st and 2nd Plaintiffs

Defendant – Absent but served

Interested Party – Absent but served (See Affidavit of Service dated 14/11/2024)

Court Assistant – Phyllis

