



**Mwai v Muita & 4 others (Environment and Land Appeal E010 of 2023)
[2024] KEELC 13584 (KLR) (13 November 2024) (Ruling)**

Neutral citation: [2024] KEELC 13584 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NANYUKI
ENVIRONMENT AND LAND APPEAL E010 OF 2023**

**AK BOR, J
NOVEMBER 13, 2024**

BETWEEN

LAWRENCE KINYUA MWAI APPELLANT

AND

FLORENCE WAIRIMU MUITA 1ST RESPONDENT

DISTRICT LAND REGISTRAR 2ND RESPONDENT

NYARIGINU FARMERS LIMITED 3RD RESPONDENT

HON ATTORNEY GENERAL 4TH RESPONDENT

CHIEF LAND REGISTRAR 5TH RESPONDENT

RULING

1. This ruling relates to two applications brought by the Appellant. In the first application dated 26/7/2023, the Appellant seeks to have the ruling of the Learned Magistrate dated 12/7/2023 set aside. He also challenges the 1st Respondent’s ownership of plot number 438.
2. Through the second application dated 9/10/2023, the Appellant seeks to have Nanyuki CM ELC Case No. E002 of 2021 stayed, pending hearing and determination of his appeal. The application was made on the grounds that the Learned Magistrate may proceed with the suit which may interfere with the Appellant’s right to have his appeal heard and determined.
3. The Appellant swore the supporting affidavit and made arguments on how the 3rd Respondent granted the 1st Respondent plot number 438.
4. The 1st Respondent opposed the application through the Replying Affidavit she swore on 8/12/2023 in which she urged that there was nothing to stay. Further, she contended that the Appellant filed this appeal out of time without leave of the court.



5. The Appellant filed submissions which in essence argue the appeal and not the applications.
6. The issue for determination is whether the court should set aside the ruling of the trial court delivered on 12/7/2023 and grant the Appellant stay of proceedings in Nanyuki CM ELC Case No. E002 of 2021 pending hearing and determination of this appeal.
7. What the court can discern from the record of appeal filed by the Appellant is that he is challenging the ruling of the trial court of 12/7/2023 and findings that the suit property belonged to the 1st Respondent. The 1st Respondent averment that there was no action to be stayed since she had already been registered as the owner of the suit land was not controverted by the Appellant. It would serve the interests of justice if the Appellant were to take steps to canvass his appeal instead of seeking to set aside the ruling through an application.
8. The court declines to grant the orders sought in the applications dated 26/7/2023 and 9/10/2024. The Appellant is directed to set down the appeal for hearing.

DELIVERED VIRTUALLY AT NAIVASHA THIS DAY 13TH DAY OF NOVEMBER 2024.

K. BOR

JUDGE

In the presence of: -

Mr. Lawrence Mwai - Appellant

Mr. Amos Chweya for the 1st Respondent

No appearance for the 2nd to 5th Respondents

