



Mbagu (Suing on her behalf and as the administrator of the Estate of the Late David Mbagu Kingeche - Deceased) & 4 others v Karura Farmers Company Limited & 8 others (Environment & Land Case 3017 of 1990) [2024] KEELC 7578 (KLR) (11 November 2024) (Ruling)

Neutral citation: [2024] KEELC 7578 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 3017 OF 1990
LN MBUGUA, J
NOVEMBER 11, 2024**

BETWEEN

HANNAH NYAMBURA MBAGU (SUING ON HER BEHALF AND AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE DAVID MBAGU KINGECHE - DECEASED) 1ST PLAINTIFF

AGNES NYAMBURA MUGO (SUING ON HER BEHALF AND AS ADMINISTRATOR OF THE ESTATE OF THE LATE JAMES MUGO WAWERU - DECEASED) 2ND PLAINTIFF

KARUTHI KARANJA 3RD PLAINTIFF

HANNAH NYAMBURA MBAGU 4TH PLAINTIFF

SUSAN NJERI WAINAINA (SUING AS THE ADMINISTRATOR OF THE ESTATE OF THE LATE HENRY WAINANINA KARIUKI) 5TH PLAINTIFF

AND

KARURA FARMERS COMPANY LIMITED 1ST DEFENDANT

SAMUEL KUNGU 2ND DEFENDANT

FESTUS KADENGE 3RD DEFENDANT

GRACE GATHURI 4TH DEFENDANT

PETER MUGO MBUTHIA 5TH DEFENDANT

PETER MARERI 6TH DEFENDANT

FLORENCE WANGUI 7TH DEFENDANT

BENJAMIN MATHINGI 8TH DEFENDANT

PETER MUNGAI 9TH DEFENDANT



RULING

1. Before me is the 2nd and 9th defendants Notice of Motion Application dated 15.10.2024 seeking an order for stay of execution of the judgment pending the hearing and determination of the intended appeal. The application is premised on grounds on the face of the application and the supporting affidavit of Samuel Kungu, the 2nd defendant. The applicants contend that they were aggrieved by the judgment of this court delivered on 3.10.2024 and they have duly filed a Notice of Appeal. They contend that they stand to suffer irreparable harm if the orders sought are not granted.
2. The 1st, 3rd, 4th & 5th plaintiffs have opposed the application vide the Replying Affidavit sworn by the 3rd plaintiff on 28.10.2024. They contend that mere occupation which is illegal cannot be a ground to claim substantial loss, and that it is not enough for the applicants to aver that they will suffer irreparable harm. It is further argued that the applicants have not offered any security.
3. The 2nd plaintiff has also opposed the application vide her Replying Affidavit dated 28.10.2024. She avers that the applicants have not demonstrated any substantial loss that they stand to suffer if the application is not allowed, adding that the suit is one of the oldest in this station.
4. I have considered the rival arguments relating to the question of STAY OF THE JUDGMENT. Matters relating to stay of execution are governed under the provisions of Order 42, Rule 6 of the Civil Procedure Rules. But again, the relief of stay is discretionary and the discretion must be exercised judiciously and upon defined principles of law; not capriciously or whimsically, See Loice Khachendi Onyango v Alex Inyangu & Another [2017] eKLR.
5. I have also taken into account that land is an emotive issue, hence it is only fair and just that the applicants be given an opportunity to ventilate their grievances in a higher court. Further, a notice of appeal has duly been lodged. Weighing the interests of the protagonists, and considering that the matter has been in court for many years (since 1990), the court hereby grants a stay of execution of the judgment dated 3.10.2024 for a period of 90 days from the date of delivery of this ruling. The applicants shall pay costs of the application to the plaintiffs.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 11TH DAY OF NOVEMBER 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:

Matwere for 1st, 3rd, 4th, 5th Plaintiffs

Jane Okoth for 2nd Plaintiff

Oyugi for 2nd & 9th Defendants/Applicants

Court Assistant: Vena

