



**Musingi v Muthoni & another (Environment & Land Case 136 of 2012)
[2024] KEELC 13924 (KLR) (19 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13924 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT & LAND CASE 136 OF 2012
LN MBUGUA, J
DECEMBER 19, 2024**

BETWEEN

ANASTACIA WANJIRU MUSINGI PLAINTIFF

AND

ANTHONY MWANGI MUTHONI 1ST DEFENDANT

NAIROBI COUNTY GOVERNMENT 2ND DEFENDANT

RULING

1. Before me is the 1st defendant’s Notice of Motion dated 19.2.2024 seeking an order for stay of execution of the judgment delivered on 25.1.2024 pending the determination of the appeal. The application is premised on the grounds on the face of the application and the supporting affidavit of the applicant. He avers that he was dissatisfied with the aforementioned judgment and has therefore lodged an appeal. He contends that he stands to suffer if the orders are not granted as he will be evicted from the land.
2. In opposition thereof, the plaintiff filed a Replying Affidavit dated 8.4.2024 contending that the illegal acquisition and occupation of the suit property by the applicant should not be entertained.
3. I have considered all the rival arguments. The issue falling for determination is whether the court should allow the prayer for stay of execution in this matter.
4. The law governing matters of stay of execution is anchored under Order 42, Rule 6 of the *Civil Procedure Rules*, which provides 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,.....



- (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.”
5. The court has discretion to grant or to refuse to grant the orders sought, in that the court when granting a stay, it has to balance the interests of the applicant with those of the respondent. In determining this balance, the court gives due consideration to the three criteria set out under the above mentioned provisions of law.
6. In the Court of Appeal case of *Halai & another v Thornton & Turpin (1963) Ltd* [1990] eKLR, it was stated that:

“Before the superior court can exercise its discretion in favour of an applicant for a stay of execution, the applicant must first establish a sufficient cause... secondly the court must be satisfied that substantial loss would ensue from a refusal to grant a stay; and thirdly the applicant must furnish security. The application must, of course, be made without unreasonable delay...”
7. The court has taken into consideration that the applicant appears to be keen to pursue an appeal, and that he is the one in possession of the suit property. But again, the court takes into account that plaintiff has been denied enjoyment of her rights to the suit property for decades (see paragraph 76 of the judgment), hence plaintiff was awarded general damages to the tune of Ksh.1,100,000 as against the applicant. In the circumstances, the court grants a conditional stay of execution of the judgment in the following terms:
 1. The applicant shall deposit the sum of Ksh 500 000 in court within a period of 30 days.
 2. The stay of execution order shall remain in force for a period of 4 months.
 3. The applicant is condemned to pay costs of the application.

DATED, SIGNED AND DELIVERED AT NAIROBI THIS 19TH DAY OF DECEMBER, 2024 THROUGH MICROSOFT TEAMS.

LUCY N. MBUGUA

JUDGE

In the presence of:-

Olewe for the Plaintiff

Njugi for 1st Defendant

Court Assistant: Vena

