



**Kimani v Kimata (Environmental and Land Originating Summons
E015 of 2021) [2025] KEELC 2979 (KLR) (28 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2979 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENTAL AND LAND ORIGINATING SUMMONS E015 OF 2021**

**A OMBWAYO, J
MARCH 28, 2025**

BETWEEN

JAMES NGIGI KIMANI PLAINTIFF

AND

PETER WACHIRA KIMATA DEFENDANT

RULING

1. Before this court are two applications, one for stay of execution pending appeal dated 14th February 2025 and for eviction of the judgment debtor dated 16th of December 2024. The latest application is by the plaintiff judgment debtor who prays that pending the hearing and determination of appeal serialized as Nakuru Court Of Appeal Civil Appeal No. 15 of 2025 James Ngigi Kimani Vs. Peter Wachira Kimata, this Honorable court be pleased to stay the execution of the judgment and/or decree in Nakuru ELC NO. 15 OF 2021 (OS) delivered on 14th March, 2024 and all other consequential orders arising there from. Costs be in the cause. The application is based on grounds that this suit was instituted by the Plaintiff/Applicant against the Defendant]Respondent vide originating summons dated 29th July 2021. The Plaintiff/Applicant sought to be declared the owner of the suit property on basis of adverse possession having been in peaceful, exclusive and uninterrupted possession of the suit land since the year 1990 and which is a period of over 30years. In response thereto, the Defendant/ Respondent filed a Counterclaim dated 26th September, 2023 wherein they sought the eviction of the Plaintiff/Applicant.
2. As a result of the inadvertency of the then Plaintiffs/Applicant's advocates caused by alcoholism, he was unable to successfully litigate his claim as the same was left unattended which culminated in an ex-parte judgment being delivered against him. This Honorable Court in its Judgment delivered on 14th March 2024 ordered made a declaration that the Defendant/Respondent is the lawful and legal absolute proprietor of parcel of land known as Dundori/Mugwa Thi Block 2/3208. An order for the Appellant/Applicant to vacate possession of LR Dundori/Mugwa Thi Block 2/3208. Mesne profits for Kshs. 8,000 was granted to the Defendant/Respondent. Costs of the Counter claim.



3. The Plaintiff/Applicant being aggrieved by judgement, lodged an application dated 15th July 2024 wherein he sought an order for setting aside the ex-parte judgement delivered on 14th March 2024 together with the decree and any other consequential orders arising therefrom and that his case which was dismissed be reinstated for hearing. His application was however dismissed vide Ruling delivered on 31st October 2024.
4. Being aggrieved by the ruling, the Plaintiff/Applicant lodged an appeal in the Court of Appeal serialized as Nakuru Court of Appeal Civil Appeal No. EOI 1 of 2025. Currently, the Defendant/Respondent vide an application dated 1 6th December, 2024 has sought the eviction of the Plaintiff/Applicant from the suit land.
5. It is crystal clear that the execution of the decree herein shall cause substantial loss on the Plaintiff/Applicant since he developed the suit land by constructing his home thereon and he has lived there peacefully with his family for over 30 years and as such, he shall be left homeless and destitute and yet there is already a pending appeal on the matter. I agree with the applicant that unless an order of stay of execution of the judgment delivered on 14th March, 2024 is granted Plaintiff/Appellant shall suffer substantial distress in that the Defendant/Respondent shall be free to deal with the same as he wishes, including selling, alienating, transferring and or charging the same which shall render the Appeal to the Court of Appeal nugatory or an academic exercise. There is a real danger that if the judgment delivered on 14th March, 2024, is not stayed, the Plaintiff/Applicant shall be a ripe candidate for eviction by the Defendant Respondent which shall occasion substantial loss to him and which cannot be compensated by an award of damages as he shall be forced to vacate his place of abode over 30 years and his home will likely be destroyed.
6. The Plaintiff/Applicant believes that he has an arguable appeal and thus should be allowed a fair chance to prosecute it before the Court of Appeal without the threat of execution.
7. The Plaintiff/Applicant herein is willing to abide by any reasonable conditions set by this honorable court as a prerequisite to the grant of the orders sought herein above if need be. The Plaintiffs/Applicant's believes that the appeal has high chances of success and raises Weighty issues which shall be determined by the Appellate Court. This honorable court is implored to consider the substantial loss/harm that stares in the face of the Plaintiff/Applicant if the decree is executed against him when the said award is still subject of an appeal before the Court of Appeal. It is in the interest of the administration of justice that this Honorable Court grants the Plaintiff/Applicant herein the orders sought. This Honorable Court has discretion to issue orders for stay of execution and we urge the court to exercise its discretion in favor of the Plaintiff/Applicant.
8. The defendant/decree holder had filed an earlier application seeking an order of eviction application seeking an order of eviction of the plaintiff from the suit land Dundori/Mugwathi Block2/3208. He was also seeking an order that the O.C.s Lanet Police Station to assist in the eviction. The applicant relies on the judgment that was delivered by this court on the 14th March 2024.
9. I have considered both applications in totality and do find that the application for stay of execution pending appeal should be heard first. I do fond that there is an appeal lodged in the Court of Appeal on 21st January 2025. The application herein was lodged on 14th February 2025. There is no unreasonable delay envisaged herein. I do find that if the application is not granted, the judgment debtor is likely to suffer substantial loss because he is in possession of the property and will lose the same. I do order that there be a stay of execution pending appeal on condition that the appellant deposits security of Ksh.200,000 in an interest earning account to be opened in the joint names of the two firms of advocates representing the parties in a reputable Bank in Nakuru. The application for eviction is not allowed.



SIGNED BY: HON. JUSTICE ANTONY O. OMBWAYO

THE JUDICIARY OF KENYA.

NAKURU ENVIRONMENT AND LAND COURT

ENVIRONMENT AND LAND COURT DATE: 2025-03-28 11:44:04

THE JUDICIARY OF KENYA

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