



**Ogumbo v Ongaki (Sued as legal representative of the Estate of Christopher Ongaki Nyagunia)
(Environment & Land Case 92 of 2005) [2024] KEELC 13771 (KLR) (11 December 2024) (Ruling)**

Neutral citation: [2024] KEELC 13771 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KISII
ENVIRONMENT & LAND CASE 92 OF 2005**

M SILA, J

DECEMBER 11, 2024

BETWEEN

JUVINALIS ONSANDO OGUMBO PLAINTIFF

AND

**REBECCA MORAA ONGAKI (SUED AS LEGAL REPRESENTATIVE OF THE
ESTATE OF CHRISTOPHER ONGAKI NYAGUNIA) DEFENDANT**

RULING

1. There are two applications before me. The first is dated 25 July 2024 filed by the plaintiff/decree holder. She seeks to have the defendant/judgment debtor to show cause why she should not be evicted, and for an order for her eviction, from the land parcel West Kitutu/Bogusero/2410 (the suit land). The plaintiff contends that he has judgment in his favour for possession of the land delivered on 26 July 2019, that the defendant was given 60 days to vacate the suit land; that the defendant has continued being in possession; that the efforts to have the defendant evicted were thwarted by the disappearance of the court file; that the court file is now reconstructed and that the order of eviction should issue.
2. The second application is filed by the defendant dated 9 September 2024. She seeks stay of execution of the judgment pending hearing and determination of an intended appeal to the Court of Appeal. In the supporting affidavit she avers that she filed an appeal to the Court of Appeal being Kisumu Civil Appeal No. 213 of 2019 which she instructed her advocate to withdraw owing to some technicalities. She then filed an application for leave to appeal out of time; that the application was heard and her counsel was informed that ruling would be on notice; that her advocates wrote letters seeking to know whether ruling was delivered; that counsel was informed that ruling was delivered on 19 March 2021 and the ruling was to effect that she files the notice of appeal within 14 days and thereafter to file the record of appeal within 60 days; that the time has lapsed; that she has instructed her advocate to file another application for enlargement of time which application is pending hearing before the Court of Appeal. She has annexed a copy of the said application dated 19 July 2024 and avers that if execution is not stayed it may render the intended appeal nugatory.



3. I directed the two applications to be heard together and I have considered the same together with the submissions filed.

There is no question that the plaintiff has judgment in his favour. However, it would also appear that the defendant wishes to appeal that judgment. The defendant was allowed an extension of time to file appeal which time has now lapsed but she has applied for enlargement of time on the basis that she was not aware of the ruling of the Court of Appeal delivered on 19 March 2021.

4. I cannot tell what the outcome of that ruling will be as it may go either way. It is nevertheless discernible that if the application is successful, and an appeal is preferred and allowed, and it turns out that the defendant has been evicted, she may stand to suffer irreparable loss. I think that before I give the order of eviction or otherwise fully attend to the application dated 25 July 2024, it is only fair that we first await the outcome of the Court of Appeal's decision on the application before it.

5. We cannot however run away from the fact that the defendant has been in possession of the suit land since 2019 yet there is judgment in favour of the plaintiff. We do not know how long the Court of Appeal will take to hear the application or whether the Court of Appeal will allow it. I think the plaintiff is entitled to some sort of security to compensate him while the issue of whether or not the appeal will be admitted is being sorted out.

6. In my discretion, I will order the defendant to deposit in court the sum of Kshs. 150,000/= as security within the next 60 days. In default the plaintiff can proceed to execute the decree and evict the defendant. If security is not deposited the plaintiff will have the costs of both applications, but if it is deposited, there will be no orders as to costs. If the defendant deposits security but fails in her quest to appeal out of time, the security be forfeited to the plaintiff and the plaintiff will be at liberty to apply afresh for an order of eviction.

7. I believe that the orders above dispose of the two applications.

8. Orders accordingly.

DATED AND DELIVERED THIS 11 DAY OF DECEMBER 2024

JUSTICE MUNYAO SILA

JUDGE, ENVIRONMENT AND LAND COURT

AT KISII

Delivered in presence of:

Ms. Bosire for the defendant

N/A on part of M/s Oguttu Mboya, Ochwal & Partners for the plaintiff

Court Assistant – David Ochieng'

