



**Wang'ombe v Nyamu (Environment & Land Case 48 of 2017)  
[2023] KEELC 366 (KLR) (26 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 366 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU  
ENVIRONMENT & LAND CASE 48 OF 2017**

**YM ANGIMA, J  
JANUARY 26, 2023**

**BETWEEN**

**SAMUEL M WANG'OMBE ..... PLAINTIFF**

**AND**

**CHARLES MURIITHI NYAMU ..... DEFENDANT**

**RULING**

1. By a notice of motion dated April 25, 2022 brought under sections 1A, 1B, 3 & 3A of the [Civil Procedure Act](#), chapter 21 Laws of Kenya and order 42 rules 6 & 7 of the [Civil Procedure Rules, 2010](#) and all enabling provisions of the law, the defendant sought a stay of execution of the decree passed on March 17, 2022 and all consequential orders pending the hearing and determination of an intended appeal to the Court of Appeal.
2. The application was based upon the grounds set out on the face of the motion and the contents of the supporting affidavit sworn by the defendant on April 25, 2022 and the exhibits thereto. The defendant contended that unless the stay sought was granted he stood the risk of suffering irreparable loss and of the appeal being rendered nugatory. He further stated that he was ready and willing to provide security for due performance of the decree and to abide by any conditions the court may impose. The defendant further contended that the application had been filed without unreasonable delay and that it was in the interest of justice for the stay sought to be granted.
3. The plaintiff filed a replying affidavit sworn on August 16, 2022 in opposition to the application. It was contended that the application was incompetent and lacking in merit. It was the plaintiff's case that the defendant had failed to demonstrate that he stood to suffer any irreparable loss or that the intended appeal shall be rendered nugatory in the absence of a stay. The plaintiff further contended that the application was an abuse of the court process hence the same ought to be dismissed with costs.



4. When the application was listed for directions it was directed that it shall be canvassed through written submissions. The parties were consequently given timelines within which to file and exchange their submissions. The record shows that the plaintiff filed his submissions on October 6, 2022 whereas the defendant opted to rely entirely upon the material and affidavits on record.
5. The court has noted that during the pendency of the application the court bailiff returned the warrants issued in execution of the decree on October 3, 2022 with an endorsement by the OCS of Kipipiri Police Station that the warrant for the defendant's eviction was successfully executed on September 30, 2022. It was thus the plaintiff's submission that the instant application has been overtaken by events since the defendant had already been evicted from the suit property.
6. The court has noted that the defendant did not file any further or supplementary affidavit to controvert the return of the court bailiff who executed the warrant of eviction. In the premises, the court is entitled to accept as true the position taken by the court bailiff and the OCS – Kipipiri Police Station that the defendant was, indeed, evicted on September 30, 2022.
7. It would, therefore, follow that the decree sought to be stayed having been long executed, there is really nothing to be stayed. The court agrees with the plaintiff's submission that the instant application has been overtaken by events hence untenable. In the case of *Elijah Kimani Kimuyu & 2 Others v Francis Mburu Kamau [2021] eKLR* it was held, inter alia, that:

“We have anxiously considered the application. The assertion by the respondent that the decree has already been executed is not controverted, meaning that the application for stay of execution has been overtaken by events.”
8. In the premises, it would be superfluous for the court to embark upon an examination of the principles for the grant of an order of stay of execution stipulated in order 42 rule 6 of the *Civil Procedure Rules*. The court is thus of the opinion that the defendant's instant application is for rejection. Accordingly, the defendant's notice of motion dated April 25, 2022 be and is hereby dismissed with costs to the plaintiff.
9. It is so ordered.

**RULING DATED AND SIGNED AT NYAHURURU AND DELIVERED VIA MICROSOFT TEAMS PLATFORM THIS 26<sup>TH</sup> DAY OF JANUARY, 2023.**

**Y M ANGIMA**

**JUDGE**

In the presence of:

Mr Nderitu Komu for the the plaintiff

Mr Githiru for the defendant

C/A - Carol

