



**Muchai & another v Mungania (Environment and Land Appeal E064 of 2022) [2023] KEELC 715 (KLR) (18 January 2023) (Ruling)**

Neutral citation: [2023] KEELC 715 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MERU  
ENVIRONMENT AND LAND APPEAL E064 OF 2022  
CK NZILI, J  
JANUARY 18, 2023**

**BETWEEN**

**CYPRIAN KITHINJI MUCHAI ..... 1<sup>ST</sup> APPELLANT**

**GIDEON KIMATHI M'ARIMI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**RUTH MWITU MUNGANIA ..... RESPONDENT**

**RULING**

1. The court is asked by an application dated October 31, 2022 to order for stay of execution against the decree of the lower court issued on October 26, 2022 pending the hearing and determination of this appeal.
2. The application is opposed by a replying affidavit of Ruth Mwita Mungania sworn on November 15, 2022 on the basis that the said application falls short of meeting the threshold under order 42 rule 6 of the *Civil Procedure Rules* and further, that it is a delaying tactic or the respondent's realization of the fruits of her judgment.
3. For a party to be entitled to stay of execution of a decree he must bring the application without unreasonable delay, demonstrate substantial loss, offer security for the due realization of the decree should the appeal fail and lastly, demonstrate that it is in the interest of justice to grant the orders sought.
4. While expounding these requirements, the court in *James Wangalwa & another vs Agnes Naliaka Cheseto (2012) eKLR*, held that execution was a legal process and by itself being put in motion did not amount to substantial loss and that a party must establish other extenuating factors that the execution will create a state of affairs that will irreparably affect or negate the very essential core of the applicant as the successful party in the appeal. Further, the court held that substantial loss was what had to be prevented by preserving the status quo for the loss would render the appeal nugatory.



5. In *RWW vs EKW (2019) eKLR*, the court took the view that the purpose for stay of execution was to preserve the subject matter in dispute so that the rights of the appellant who has an undoubted right of appeal are safeguarded if the appeal were to be successful but in doing so the court should also weigh this right against the rights of the successful litigant who should also not be deprived of the right to enjoy the fruits of his judgment.
6. A party seeking for such orders guided by the foregoing authorities must bring tangible and cogent material to substantiate the claim of substantial loss. In this application, judgment was rendered on October 26, 2022 and the application filed on October 31, 2022.
7. Firstly, the affidavit sworn by Gedion Kimathi M'Arimi is scanty on details on what status quo is, the nature of injury or loss likely to be occasioned and secondly on whether the process of execution has been put on motion. Thirdly, the applicant does not offer any security for the due realization of the decree should the appeal fail. It is not enough to allege substantial loss without proving and or demonstrating it.
8. The upshot is I find the application lacking merits. The same is dismissed with costs. The lower court file to be availed and parties to fast track the hearing of the appeal.

Orders accordingly.

**DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT THIS 18TH DAY OF JANUARY, 2023**

In presence of:

C/A: Kananu

Mwendwa for applicant

Gachohi for respondent

**HON. C.K. NZILI**

**ELC JUDGE**

