



REPUBLIC OF KENYA



**Gathaga & another v Mureithi & 2 others (Environment & Land Case
86 of 2016) [2025] KEELC 2907 (KLR) (26 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 2907 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KITALE
ENVIRONMENT & LAND CASE 86 OF 2016**

**CK NZILI, J
MARCH 26, 2025**

BETWEEN

EUNICE WANGARE GATHAGA 1ST PLAINTIFF

JOHN ANONO MUNDIA 2ND PLAINTIFF

AND

JOSEPH MUREITHI 1ST DEFENDANT

ALFRED OBAT 2ND DEFENDANT

HELLEN ONYANGO OFINYO 3RD DEFENDANT

RULING

1. The application dated 18/12/2024 is for orders to stay further execution of the judgment of this court delivered on 19/12/2022, pending the appeal. The grounds are that the applicants filed a notice of appeal without delay; the respondents have begun enforcing the decree, and the appeal shall be rendered nugatory. Further grounds in the affidavit sworn by Eunice Wangare are that the applicants filed a notice of appeal and requested proceedings which are yet to be availed. The copies of the notice of appeal and letter are attached as annexures marked EWG 1(a) & (b).
2. When the matter came up on 20/12/2024, parties were directed to serve and file responses as well as written submissions to the application.
3. The respondents, through a replying affidavit sworn by Joseph Mureithi on 30/1/2025, oppose the application on the basis that there is nothing to stay as the judgment has already been perfected. The surveying and fixing of the waterway was done on 11/12/2024 and finalized on 8/1/2025, in the presence of all parties. Again, the respondents aver that the waterway was opened and boundaries for plot numbers Trans Nzoia Suwerwa/382,387,668 and 471 fixed.



4. In addition, the respondents aver that the delay in bringing the application after 730 days is inordinate and has not been explained. Attached as annexure marked JM1 are copies of the letter dated 28/11/2024 informing the applicants of the survey, a court order dated 14/5/2024 for the OCS to provide security, the decree, and authority to plead.
5. The applicants rely on written submissions dated 31/1/2025 and submit to having met the grounds for issuance of stay pending appeal. The applicants submit that they filed this application without unreasonable delay, they stand to suffer loss if the orders sought are not granted and are willing to provide security. They rely on Kakamega HCC Civil Appeal No. 20 of 2022 and HGE -vs- SM and Nduhiu Gitahi-vs- Warugongo (1988) KLR 621.
6. The respondents rely on written submissions dated 30/1/2025 and cited Order 42 Rule 6(2) of the Civil Procedure Rules, Republic -vs- Kenya Maritime Authority & Another(2021) KEHC 309(KLR) cited in Kenya Bureau of Standards -vs- Centurion Engineers Builders Limited & 4 others (2024) KECA 1181 (KLR) on the proposition that there must be orders capable of being stayed since the court cannot grant a stay of orders that have already been executed. Further, the respondents submit that the application is bad in law, bereft of merit, and an abuse of court process.
7. Order 42 Rule 6 of the Civil Procedure Rules requires an applicant seeking a stay of execution pending appeal to demonstrate that:- Substantial loss may result to the applicant unless the order is made; the application is made without unreasonable delay, and such security as the court orders for the due performance of such decree or order as may ultimately be binding on him.
8. A stay of execution of a judgment or a decree is only granted where sufficient cause has been shown. In Antoine Ndiaye -vs- African Virtual University (2015) eKLR, Gikonyo J held that a stay of execution should only be granted where the applicant has shown sufficient cause, and in determining whether sufficient cause has been shown, the court should be guided by the three prerequisites provided under Order 42 Rule 6 of the Civil Procedure Rules.
9. The sole purpose of a stay of execution is to preserve the status quo pending the hearing of the appeal. In RWW -vs- EKW [2019] eKLR, it was observed that: “The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in so doing, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of their judgment. The court is also called upon to ensure that no party will suffer prejudice that an award of costs cannot compensate.”
10. Applying the above principles to the instant application. On whether the application is brought timeously. The judgment was delivered on 19/12/2022. The notice of appeal was filed on 10/1/2023, while this application was filed on 18/12/2024. It has been brought after a delay of almost 2 years, which the applicants have not explained. The applicants have only attached a letter dated 10/1/2023 requesting the judgment and the proceedings and nothing more. In the absence of a plausible explanation for the delay in applying for stay, the same is found to have been brought after an unreasonable delay.
11. On security, as considered in Arun C. Sharma -vs- Ashana Raikundalia T/A Rairundalia & Co. Advocates (2014) eKLR, it has to be sufficient to guarantee the due performance of the decree. In this application, none has been offered by the applicants other than pointing to the same in the submissions. The same cannot be considered as submissions are not pleadings but only persuasive to the court. The applicants did not state what substantial loss they were likely to suffer following the execution or how the appeal would be rendered nugatory. In any event, execution is a lawful process



that does not amount to substantial loss. See James Wangalwa -vs- Agnes Naliaka Chesoto(2012) eKLR.

12. In the impugned judgment, the county surveyor was directed to inter alia; resurvey the suit land, open the waterways, and create correct boundaries to title numbers Trans Nzoia Suwerwa/382, 387, 668 and 471. He was also ordered to resurvey Trans Nzoia Suwerwa/387 to ascertain the proper boundaries of the plots mutating therefrom. Additionally, the court issued a permanent injunction restraining all parties from altering the position on the ground and or altering the new waterway boundaries.
13. To implement the decree, the respondent filed an application dated 19/2/2024, which was allowed, seeking for the OCS Kapolet Police Station to provide security to the county surveyor during the execution of the decree.
14. The applicants were informed of the pending implementation, facts which they have not denied. Court orders are not issued in vain or in a vacuum. The applicants have not stated which partial implementation has occurred and what remains to be executed for this court to issue any stay orders. The judgment sought to be stayed is said to have been fully enforced, and nothing remains for this court to stay, pending the intended appeal by the applicants.
15. In view of the foregoing, the application has not met the prerequisites for grant of orders of stay pending appeal. It is also filed too late in the day and seems to be an afterthought. Therefore, it is dismissed for want of merits with costs to the respondents.

RULING DATED, SIGNED AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT KITALE ON THIS 26TH DAY OF MARCH 2025.

In the presence of:

Court Assistant - A. Ebenyo

No appearance for the parties.

HON. C.K. NZILI

JUDGE, ELC KITALE

