



**Anjuri v Iyaya (Miscellaneous Application 18 of 2023)
[2024] KEELC 62 (KLR) (17 January 2024) (Ruling)**

Neutral citation: [2024] KEELC 62 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
MISCELLANEOUS APPLICATION 18 OF 2023**

CK NZILI, J

JANUARY 17, 2024

BETWEEN

SAMUEL MUCHUI ANJURI APPLICANT

AND

ISAAC MUTUMA IBAYA RESPONDENT

RULING

1. What is before the court is the application dated October 26, 2023 in which the appellant seeks to stay the execution of a decree by the trial court pending the hearing and determination of this appeal.
2. The grounds are set in the application, and a supporting affidavit sworn on 26.10.2023 by Samuel Muchui Anjuri.
3. The applicant averred that the effect of the decree: is he be evicted from L.R No. Nyambene/Uringu 1/3379 & 2813. It is averred that the respondent filed an application dated September 7, 2023, due on November 7, 2023, seeking execution.
4. Further, the applicant says he lives on L.R. No.2813, a family land his late father owned. Additionally, the applicant states that L.R. No.3379 and 2813 are subject to a pending Meru HCJR No. E007 of 2022, and should he be evicted, he stands to suffer prejudice.
5. In the supporting affidavit, the applicant has attached copies of the eviction orders, the application dated September 7, 2023, a copy of the judicial review application land survey report, and the official search as annexures marked SMA “1” – “4,” respectively.
6. Though service of the application was effected on October 13, 2023 upon the respondent, no replying affidavit was filed.
7. By written submissions dated November 8, 2023, the applicant submitted that, whereas a decree has been issued against him, the suit parcel is subject to another suit seeking to compel the land registrar



- to implement a decision dated May 6, 1999. Therefore, the applicant submitted that if the eviction occurred and his pending suit succeeds, he will suffer irreparable/irreversible damage. Reliance was placed on the [Re-Estate of Harish Chandara Hindocha Deceased](#) (2021) eKLR.
8. On delay, the applicant submitted that a judgment was delivered on June 22, 2023 but only became aware of the it September 7, 2023.
 9. Further the applicant submitted that he was ready and willing to offer such security as the court may deem fit proper and just in the circumstance. Reliance is placed on [Richard Muthusi v Patrick Gituma Ngomo and another](#) (2017) eKLR, [Chris Munga N Bichage v Richard Nyagaka Tongi & others](#) (2013) eKLR, [Mohammed Salim t/a Choice Butchery v Nasserpuria Memon Jamat](#) (2013) eKLR citing with approval *M/s Portreitz Maternity v James Karanga Kabia C/A No. 63 of 1997*.
 10. A party seeking stay of execution must apply without unreasonable delay, demonstrate substantial loss or damage, offer security for the due realization of the decree, and lastly, establish if it is in the interest of justice to grant the orders sought.
 11. In [Richard Muthusi v Patrick Gituma Nzomo](#) (*supra*), the court cited with approval [Chris Munga N Bichage v Richard Tongi](#) (*supra*), that an applicant must persuade the court he has an arguable appeal which is not frivolous and if it succeeds and there is no stay, the same would be rendered nugatory. Further, the court cited with approval [Mohamed Salim t/a Choice Butchery v Nasserpuria Memon](#) (*supra*) and *Portreitz maternity v James Karanga* (*supra*) that the right of appeal must be balanced against an equally weighty right of the judgment creditor to enjoy the fruits of his judgment, which can only be curtailed if there is a just cause.
 12. In [Re-estate of Harish Chandra Hindocha](#) (*supra*), the learned judge of appeal said an arguable appeal was one raising a bonafide issue deserving consideration by a court and that the court should do justice to the parties without necessarily imposing conditionalities to falter the right to be heard. The court cited with approval [Attorney General v Okiya Omtata Okoiti & another](#) (2019) eKLR, that the guiding principle when deciding whether the intended appeal will be rendered nugatory is whether what the applicant intends to reclaim would be reversed. Further, the court observed that an appeal would be rendered nugatory if the consequential effects of the failure to grant the relief sought would be either irreversible or highly prejudicial to render of no consequence the intended appeal.
 13. Stay of execution herein is being sought pending hearing and determination of Meru ELC JR No. E007 of 2022. There is no indication if the court gave leave to commence judicial review proceedings, and if so, leave was to act as a stay of the proceeding before the lower court, giving rise to the decree sought to be executed. There is no indication if the lower court was notified formally of such parallel proceedings. Additionally, there is no indication if the applicant has appealed against the decree rendered on August 31, 2023.
 14. Order 42 [Civil Procedure Rules](#) relates to a stay pending appeal. There is no pending appeal before this court. The applicant is seeking a stay of the lower court suit pending the hearing of another suit before this court. In [Kenya Wildlife Service v James Mutembei](#) (2019) eKLR, Gikonyo J held that a stay of proceedings should not be confused with a stay of execution. The court observed that the former was a grave judicial action that seriously would interfere with the right of a litigant to conduct his litigation, impugn the right to access justice or to be heard without delay and fair trial. The court said the stay of proceedings has a higher test and was stringent.
 15. In *Global Tours and Travel Ltd HC Winding up Case No. 43 of 2000*, the court said stay of proceedings or further proceedings on a decree or order was a matter of judicial discretion exercisable only in the interest of justice by weighing the pros and cons of granting or not granting the order bearing in



mind the need for expeditious disposal of suits, prima facie merits of the intended appeal, security and optimum utilization of judicial time and whether the application was brought expeditiously.

16. In *David Morton Silverstein v Atsango Chesoni* (2002) eKLR, the court of appeal said each case must depend on its facts. Further, in *Muchanga Investments Ltd v Safaris Unlimited (Africa) Ltd & 2 others* (2009) eKLR, the Court of Appeal observed judicial time was the only resource courts have at their disposal, and its management does positively or adversely affect the entire system of the administration of justice.
17. In annexure marked SMA “3,” there is no indication if one of the prayers was for the stay of Meru CMCC No. E095 of 2021. Stay of eviction concerned parcel No. 945 Uringu I Adjudication Section. The nexus between Parcels No’s.3379 and 2813 with Parcel No. 945 is unclear. The application herein is listed as an interested party in the judicial review case. He has not indicated his stake, which would be prejudiced if the stay of proceedings is not granted.
18. The overriding objective of this court under Section 1A & 1B *Civil Procedure Act* is the just determination of the proceedings and the expeditious disposal of suits in a cost-affordable manner. The judicial review case has been on since 2022. There is no indication if the applicant sought to stay the lower court suit before the entry of judgment on June 22, 2023.
19. Consequently, my finding is that the application lacks merits. The same is dismissed with costs.
File closed.

DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS/OPEN COURT AT MERU ON THIS 17TH DAY OF JANUARY 2024

In presence of

C.A Kananu/Mukami

Respondent in person

HON. CK NZILI

JUDGE

