

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT EMBU

ELC JR CASE NO. 8 OF 2014

REPUBLIC
APPLICANT

VERSUS

THE CHIEF REGISTRAR.....1ST
RESPONDENT

THE DIRECTOR OF LAND ADJUDICATION
AND SETTLEMENT.....2ND
RESPONDENT

THE DIRECTOR OF SURVEYS.....3RD
RESPONDENT

THE DISTRICT SURVEYOR-MBEERE.....4TH
RESPONDENT

THE ATTORNEY GENERAL.....5TH
RESPONDENT

AND

NJIRU KITHUA(DECEASED).....EX-PARTE
APPLICANT

AND

BENARD NJAGI MUNYI..... 1ST INTERESTED
PARTY

AMBROSE NJIRU NTHIGA.....2ND INTERESTED
PARTY

AND

ALBERT NGANGA KITHUA...SUBSTITUTED EX-PARTE
APPLICANT

RULING

1. I am called upon to make a determination on a notice of motion application dated 10.01.2024 and filed on 15.01.2024. It is expressed to be brought under Order 22 Rule 25 of the Civil Procedure Rules and section 3A of the Civil Procedure Act. The Applicant is the substituted Ex-parte Applicant, Albert Nganga Kithua. The prayers sought are as follows:

- 1. That there be a stay of execution of the order dated 12.10.2022 awarding costs to the 1st and 2nd interested parties pending the hearing and determination of Embu ELC Case No. 48 of 2019.*
- 2. That costs of the application be provided for.*

2. The application is premised on the grounds set out on the face of it and on the supporting affidavit sworn by Albert Nganga Kithua on 10.01.2024. He deposed that in the present suit, his late brother Njiru Kithua, who he subsequently substituted, was seeking an order of mandamus compelling the 1st to 4th Respondents to discharge their statutory duty by implementing the Minister's Award in Ministers Appeal Case No. 143 of 1996 which related to land parcel No. Mbeere/Kirima/2244 within Kirima Adjudication Section. He averred that in the said Appeal to

the Minister their Rweru clan had been awarded 143 Acres out of the larger Mbeere/Kirima/2244. That while this matter was proceeding, his late brother sought to join the 1st and 2nd interested parties in the matter as they were interfering with Rweru's land.

3. He averred that the application to join the said interested parties was dismissed with costs which the interested parties are now claiming. He further said that the interested parties were subsequently joined in this suit on their own Application. He stated that the application for mandamus was allowed. However, it subsequently emerged that the Award of the minister could not be implemented due to the fact that the portion of land that the minister had awarded the Rweru clan had also been awarded to Ciina clan represented by the 1st interested party and Mbandi clan represented by the 2nd interested party.
4. He stated that he then filed Embu ELC Case No.48 of 2019 as against the 1st and 2nd interested parties, amongst others, in which case he is claiming the parcel of land awarded to Rweru clan by the minister. That the 1st interested party is the 34th Defendant while the 2nd interested party is the 32nd Defendant in that matter. He averred that he is seeking

to have stay of execution on the issue of the costs until the pending matter is determined. He annexed to the supporting affidavit a copy of a Notice to show cause and a copy of the Plaintiff in ELC Case No. 48 of 2019.

5. The 2nd interested party, Ambrose Njiru Nthiga, in opposition to the application filed a replying affidavit dated 23.02.2024. He deposed that the orders made on costs in the present matter have never been reviewed, appealed against, or set aside. He averred that the alleged ELC Case No. 48 of 2019 is a separate suit from the present suit and does not in any way interfere with the orders made herein. Therefore the orders sought are unwarranted and cannot be granted.

6. The application was canvassed by way of written submissions. The Applicant filed submissions dated 07.06.2024. He clarified that there was an error in prayer 1 in the application as the orders he seeks to stay were issued on 19.05.2017 and not 12.10.2022. He submitted that that the present application is brought under Order 22 Rule 25 of the Civil Procedure Rules. He submitted that since the parties in the two suits are similar, it is only fair that a stay of execution of the orders awarding costs to the interested parties in the present suit be stayed pending the hearing and

determination of Embu ELC Case No. 48 of 2019. He stated that he was ready to abide by such terms as to security as this Court may make.

7. The interested parties filed submissions dated 11.06.2024.

They emphasized that there was no reason why execution in the present suit should not proceed as the said ELC Case No. 48 of 2019 is not an appeal against the ruling for costs. They urged that the application be dismissed.

8. I have considered the Application, the response filed to it as well as the parties submissions. The issue that arises for determination is whether the Applicant has met the threshold for grant of an order of stay of execution under Order 22 Rule 25 of the Civil Procedure Rules pending the hearing and determination of Embu ELC Case No. 48 of 2019.

9. Order 22 Rule 25 of the Civil Procedure Rules provides thus:

“Where a suit is pending in any court against the holder of a decree of such court in the name of the person against whom the decree was passed, the court may, on such terms as to security or otherwise, as it thinks fit, stay execution of the decree until the pending suit has been decided.”

10. In the present case, it is not in dispute that the orders sought to be stayed relate to costs arising from the

dismissal of an application for joinder of the interested parties. It is equally not contested that the said orders have neither been appealed against, reviewed, or set aside. They therefore remain valid and enforceable. The Applicant's main ground is that there exists a pending suit, being Embu ELC Case No. 48 of 2019, in which he seeks substantive determination of the dispute relating to the suit land as between the same parties.

11. While it is true that there is some overlap in parties, this Court notes that the cause of action and the issues for determination in the said suit are distinct from the issue of costs arising in the present proceedings. The pending suit does not challenge, vary, or otherwise affect the order on costs issued herein. Further, the Court is not persuaded that execution of the costs order would render the pending ELC matter nugatory. Costs are a consequence of litigation and, unless set aside, a successful party is entitled to enjoy the fruits of his judgment. Such party is also entitled to get the awarded costs within a reasonable time and/or without undue delay. Applications of this kind are rarely allowed unless a party shows very strong reasons for deferment of costs pending outcome of a case. Such strong reasons are

lacking here.

12. Therefore, I find that the Applicant has failed to meet the threshold for grant of an order of stay of execution under Order 22 Rule 25 of the Civil Procedure Rules. There is no need of tying the issue of costs in this matter to a case which is yet to be heard.

13. Consequently, the Notice of Motion dated 10.01.2024 and filed on 15.01.2024 is found to be bereft of merits. It is hereby dismissed with costs to the Interested Parties.

RULING DATED, SIGNED and DELIVERED virtually at **KITUI** this **30TH DAY OF JUNE, 2026** pursuant to notice dated **17/6/2026**.

In the presence of;

Court Assistant - Musyoki

Applicant - Absent

Respondent - Absent

M/s Ombongi for Wairimu Rugaita for the Interested Party - Present

A. KANIARU

JUDGE - ENVIRONMENT & LAND COURT, KITUI