



**Wakesho v Ali & another (Environment and Land Appeal  
E001 of 2025) [2025] KEELC 1298 (KLR) (18 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 1298 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT VOI  
ENVIRONMENT AND LAND APPEAL E001 OF 2025  
EK WABWOTO, J  
MARCH 18, 2025**

**BETWEEN**

**JULIANA JANE WAKESHO ..... APPELLANT**

**AND**

**ABDIRAHAMAN AHMED ALI ..... 1<sup>ST</sup> RESPONDENT**

**CHRISTOPHER NYANGE RIGHA ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. This Ruling is in respect to the Appellant's/Applicant's application dated 2<sup>nd</sup> February 2025 which seeks inter alia an order of temporary injunction restraining the Respondents from interfering with the suit premises namely Plot Number 11 situate in Voi Township pending the hearing and determination of the Appeal. The application also seeks an order for stay of the enforcement of the order of costs made in favour of the Respondents in the judgment delivered on 10<sup>th</sup> December 2024 by the trial court pending the hearing and determination of the appeal.
2. The application is supported by the affidavit sworn by Juliana Jane Wakesho on 2<sup>nd</sup> February 2025. It was averred that she purchased the property vide an agreement of sale dated 16<sup>th</sup> March 2002 from the 2<sup>nd</sup> Respondent. It was also averred that the suit premises are unsurveyed and a title deed has not yet been issued and hence she has not yet secured a transfer of ownership thereon from its initial allottee who is the 2<sup>nd</sup> Respondent.
3. The Applicant stated that she sued the original allottee, the 2<sup>nd</sup> Respondent in whose name such allotment remains to date, alongside the 1<sup>st</sup> Respondent who unlawfully encroached on the said premises tearing down the fence and erecting another.
4. It was also stated that the trial Magistrate heard and dismissed the suit with costs to the Respondents. The said judgment was delivered on 10<sup>th</sup> December 2024 without notice to her. She also stated that



she was dissatisfied with the said judgment and she filed an appeal vide a Memorandum of Appeal dated 31<sup>st</sup> January 2025. It was also stated that she stands to suffer immense prejudice and irreparable loss from the likely interference and loss of the suit premises and further the appeal will be rendered nugatory should the orders sought not be granted. It was further stated that the appeal has a good chance of success as demonstrated in the grounds of her Memorandum of Appeal.

5. The application was opposed by the 1<sup>st</sup> Respondent vide a Replying Affidavit sworn by Abdulrahman Ahmed Ali on 3<sup>rd</sup> March, 2025. It was contended that the application lacks merit and it has not demonstrated sufficient cause or at all to warrant a grant of the orders sought and as such it is an afterthought and an abuse of the court process. It was stated that based on the evidence and testimonies tendered in the trial court it was clear that he was the bonafide purchaser of Plot No. 11 in Voi Municipality measuring 0.04 Hectares which was purchased for Kshs. 1,200,000/= as per the sale agreement dated 31<sup>st</sup> October 2017. The said property was purchased from Harry Mwambile Righa who had purchased the same from the 2<sup>nd</sup> Respondent.
6. It was stated that the Appellant being a resident of United Kingdom and having resided there for many years could not have had physical possession or occupation of the suit property.
7. It was also stated that the Applicant has not demonstrated any willingness to furnish security for costs as awarded by the trial court to enable her appeal. The court was urged to dismiss the application.
8. During the preliminary hearing of the appeal, Learned Counsel Ms. Muyaa for the Applicant made oral submissions in support of the application while Learned Counsel Mr. Ratemo submitted on behalf of the 1<sup>st</sup> Respondent. There was no representation from the 2<sup>nd</sup> Respondent and neither did he file any response to the application.
9. The court has considered the application, response filed and the oral submissions made by Learned Counsel for the 1<sup>st</sup> Respondent and the Appellant and the main issue for determination is whether the application has met the threshold for grant of the orders sought therein.
10. This court has the requisite jurisdiction to grant an order of injunction under section 13 (7) of the *Environment and Land Court Act* No. 19 of 2011 which provides that;

In the exercise of its jurisdiction under this Act, the Court shall have the power to make any order and grant any relief as the Court deems fit and just, including—

  - (a) interim or permanent preservation orders including injunctions;
11. This Court is further empowered to grant a temporary injunction pending appeal under Order 42 Rule 6(6) of the Civil Procedure Rules which provides as follows;

“Notwithstanding anything contained in Subrule (1) of this Rule, the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”
12. Alnashir Visram, J (as he then was) while dealing with an application for injunction pending appeal stated as follows in the case of Patricia Njeri & 3 Others V National Museum of Kenya [2004] eKLR.

“In the Venture Capital case, the Court of Appeal said that an order for an injunction pending appeal is a discretionary matter. The discretion must, however, be “exercised



judicially and not in whimsical or arbitrary fashion. This discretion is guided by certain principles some of which are as follows:

- (a) The discretion will be exercised against an Applicant whose appeal is frivolous (See *Madhupaper International Limited vs Kerr* (1985) KLR 840 (cited in *Venture Capital*). The Applicant must state that a reasonable argument can be put forward in support of his appeal (*J. K. Industries vs KCB* (1982 – 88) KLR 1088 (also cited in *Venture Capital*))
- (b) The discretion should be refused where it would inflict greater hardship than it would avoid (See *Madhupaper supra*).
- (c) The Applicant must show that to refuse the injunction would render his appeal nugatory (See *Butt vs Rent Restriction Tribunal* (1982) KLR 417 (cited also in *Venture Capital*).
- (d) The Court should also be guided by the principles in *Giella vs Cassman Brown & Company Ltd* (1973) EA 358 as set out in the case of *Shitukha Mwamodo & Others* (1986) KLR 445 (also cited in *Venture Capital*.)”

13. It therefore follows that an injunction pending the hearing and determination of an appeal is a discretionary order, granted to preserve the subject matter of the appeal and ensure that the appeal if successful, it is not rendered nugatory guided by the principles like the Applicant demonstrating a prima facie case and potential irreparable harm.
14. In the instant case while the Applicant claims to be a bonafide purchaser of the suit property which claim was also made by the 1<sup>st</sup> Respondent, she has not clearly demonstrated physical occupation of the suit property considering that the same has been contested by the 1<sup>st</sup> Respondent and in the circumstances this court is unable to the grant of the order of the injunction that has been sought pending the hearing and determination of the appeal.
15. It is the court’s opinion that considering the grounds raised in the appeal and with a view of balancing the interest of both parties to this appeal and to maintain order in the suit property pending hearing and determination of the appeal, an order of maintenance of the status quo would suffice.
16. In the circumstances, this court directs that the status quo pertaining to the suit property at the time of delivery of the judgment of the trial court on 10<sup>th</sup> December 2024 shall be maintained pending the hearing and determination of the appeal.
17. It is the court’s view that from the foregoing and having considered the grounds raised by the Appellant, the appeal to this court cannot be said to be frivolous.
18. In respect to the orders staying enforcement of the order for costs, this court having perused the affidavits filed by the parties, it is evident that the Applicant has not demonstrated any actual threat or commencement of the said process by the Respondents and hence the same cannot be granted at this stage.
19. In view of the foregoing, the court finds that the orders that command themselves to the court are as follows: -
  - i. An order be and is hereby issued that the status quo currently pertaining to the suit premises Plot No. 11 situate within Voi Township as at December 10, 2024 be maintained pending the hearing and determination of the appeal herein.



- ii. Costs of this application to abide the outcome of the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT VOI THIS 18<sup>TH</sup> DAY OF MARCH, 2025.**

**E. K. WABWOTO**

**JUDGE**

In the presence of:-

Ms. Muyaa for the Appellant.

N/A for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup> Respondent.

Court Assistant: Mary Ngoira.

