



**Wahome (As Legal Representative of the Late Watson Wahome Njuru) v Maruti & another  
(As Legal Representative of the Estate of the Late Joseph Muturi Kurutu) (Environment  
and Land Appeal 18 of 2023) [2025] KEELC 3360 (KLR) (13 March 2025) (Ruling)**

Neutral citation: [2025] KEELC 3360 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYANDARUA  
ENVIRONMENT AND LAND APPEAL 18 OF 2023  
JM KAMAU, J  
MARCH 13, 2025**

**BETWEEN**

**FRANCIS NJURU WAHOME ..... APPELLANT  
AS LEGAL REPRESENTATIVE OF THE LATE WATSON WAHOME NJURU**

**AND**

**SIMON NJOROGE MARUTI ..... 1<sup>ST</sup> RESPONDENT  
ISAAC MBUTHIA MUTURI ..... 2<sup>ND</sup> RESPONDENT  
AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE JOSEPH  
MUTURI KURUTU**

**RULING**

1. Judgment in this case was delivered on 17/10/2024 in the following terms:
  - a. The Appellant’s appeal be and is hereby dismissed with costs to the Respondent.
  - b. The Respondent’s cross-appeal is hereby determined in the following terms only:
    - i. The Appellant as personal representative of the deceased purchaser shall hand vacant possession of Title Nos. Nyandarua/PESI/168 & 169 to the Respondent within 30 days from the date hereof in default of which he and anyone claiming through the purchaser shall be evicted therefrom.
    - ii. The rest of the prayers in the counterclaim are declined.
    - iii. There shall be no orders as to costs on the cross-appeal.



2. Consequently, the Appellant filed an Application dated 13/11/2024. A Notice of Appeal was filed on 30/10/2024. The Appellant seeks a Stay of Execution of the Decree herein pending the hearing and determination of the intended Appeal. The grounds upon which the Appellant predicates his Appeal are that, *inter alia*:
  1. The Applicant has lived on and invested heavily on the suit land since 1987 and erected buildings thereon.
  2. Any execution of the Decree would dispossess the Applicant and his family.
  3. The Applicant is ready, willing and able to abide by any such terms as to security as the court would Order.
  4. The only prejudice the Respondent would suffer is delay.
  5. The Application is not tainted with inordinate delay.
3. On their part, the Respondents filed a Replying Affidavit sworn on the 20/1/2025 by the 1<sup>st</sup> Respondent Simon Njoroge Muturi and states that if the Application is granted, the Respondents would be precluded from enjoying the fruits of their otherwise successful Judgment. They argue that this is their second fruitful Judgment, 2 different courts have reached the same verdict, in their favour. They claim that they have suffered for over 40 years due to the Applicant's continued stay and use of the suit properties to their exclusion unfairly. They also fear that the Applicant may not be able to settle their costs and damages and that this court should settle a high security deposit since they have been deprived of the use of the land for over 4 decades.
4. I have gone through the Judgment of the court and submissions of both parties in respect to the current Application and I arrive at the conclusion that it is important to have the suit property preserved until the Court of Appeal decides on whether to uphold or impugn the Judgment of the 2 courts. However, a balancing act is necessary. The Respondent has been denied the use of the land for over 40 years. I do order that the Applicant do vacate the suit premises and allow the Respondent to cultivate the land. Should the Applicant succeed on appeal, then he will find the land as he left it. But for the abundance of caution, the Respondent is hereby ordered not to transfer the suit premises, waste it, lease it out and/or sub-divide it until the hearing and determination of the Appeal, if any.

**RULING DATED, SIGNED AND DELIVERED AT NYANDARUA THIS 13TH DAY OF MARCH 2025.**

**MUGO KAMAU**

**JUDGE**

In the Presence of:-

Court Assistant: Eric.

Mr. Njugi for the Appellant.

Mr. Otieno for the Respondent

