



**Kalugo v Mae & another (Environment and Land Appeal  
E016 of 2023) [2025] KEELC 3104 (KLR) (3 April 2025) (Ruling)**

Neutral citation: [2025] KEELC 3104 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E016 OF 2023  
FM NJOROGE, J  
APRIL 3, 2025**

**BETWEEN**

**MWAMBOGO T KALUGO ..... APPELLANT**

**AND**

**KAHINDI MAE ..... 1<sup>ST</sup> RESPONDENT**

**STEPHEN M MAE ..... 2<sup>ND</sup> RESPONDENT**

*(An Appeal from The Judgment and Decree of HON E.K. USUI, CHIEF MAGISTRATE  
Delivered at Malindi ON 18th October 2023 In CMELC LAND CASE NO  
E 229 OF 2011 –KAHINDI MAE & ANOR V MWAMBOGO T KALUGO)*

**RULING**

1. The Notice of Motion subject of this ruling and which has been filed by the appellant is dated 19/11/2024 and it is seeking the following orders:
  - a. .... Spent;
  - b. .... Spent;
  - c. That pending the hearing of this application and the intended appeal the Honourable Court be pleased to hold judgment dated 29<sup>th</sup> of October 2024 and all consequential orders,
  - d. That the costs of this application be provided for.
2. There is a Notice of Appeal dated 18<sup>th</sup> November 2024 and filed on 19<sup>th</sup> November 2024 by Obaga Muriuki and Company Advocates. Hence, for the purpose of the stay of execution application there is deemed to be an appeal in place. The next issue to address is whether the present application of timeously filed. Judgment in 29<sup>th</sup> October 2024 and the current application was filed on 19<sup>th</sup>



November 2024, about 3 weeks later. In this court's view, there was no inordinate to delay in the lodging of the application.

3. The third issue to address is whether there is risk of substantial loss if the order sought are not granted. The suit in the lower court was in respect of unregistered land. From the evidence given in the trial Court, the intended appellant is in possession of the suit land. The judgment of the Chief Magistrate dated 18<sup>th</sup> of October 2023 issued an injunction restraining they intended appellant, his servants and agents from inter alia entering the suit land or dealing with it in any manner whatsoever. Not only that: it also ordered that in default the structures on the suit land shall be removed by the respondents after the expiry of 60 days from the date of judgment. Cost were also awarded to the respondents. It is apparent that appellant's structures are at the risk of demolition. Having taken possession of the suit land in 2005 and still being in possession today, almost 20 years later, this court is of the view that in the event execution issues and the structures are demolished and the appellant is evicted before the hearing and determination of the appeal, he may suffer substantial loss. In this court's view the current status quo ought to be preserved pending the determination of the appeal.
4. The upshot of the foregoing is that this court finds that the application dated 19<sup>th</sup> November 2024 has merit and the same is hereby granted in terms of Prayer Number 3 thereof. The costs of the application share abide the costs of the appeal provided the appellant shall file and serve the record of appeal and serve it within 60 days from the date of this order.

**DATED, SIGNED AND DELIVERED AT MALINDI VIA ELECTRONIC MAIL ON THIS 3<sup>RD</sup> DAY OF APRIL 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

