



**Chepkoiywo (Suing as the Legal Representative of the Estate of the Late Rosemary Nyambura Gachunia - Deceased) v Karuba & 49 others (Environment & Land Case 34 of 2024) [2025] KEELC 4101 (KLR) (Environment and Land) (29 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4101 (KLR)

**REPUBLIC OF KENYA**  
**IN THE ENVIRONMENT AND LAND COURT AT NAIVASHA**  
**ENVIRONMENT AND LAND**  
**ENVIRONMENT & LAND CASE 34 OF 2024**

**MC OUNDO, J**

**MAY 29, 2025**

**BETWEEN**

**JULIUS CHESARO CHEPKOIYWO ..... PLAINTIFF**  
**SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE**  
**ROSEMARY NYAMBURA GACHUNIA - DECEASED**

**AND**

**CATHERINE KARUBA ..... 1<sup>ST</sup> DEFENDANT**  
**GATHAMA NGANGA ..... 2<sup>ND</sup> DEFENDANT**  
**JOHN MWANGI MACHARIA ..... 3<sup>RD</sup> DEFENDANT**  
**MARY NDUTA NJOROGE ..... 4<sup>TH</sup> DEFENDANT**  
**JANE WANJIKU NDIRANGU ..... 5<sup>TH</sup> DEFENDANT**  
**DORCAS WAIRIMU MINYUE (CHAIRLADY OF MWANA MWIRERI WOMEN**  
**GROUP) ..... 6<sup>TH</sup> DEFENDANT**  
**MARGARET WANGARI MWANGI ..... 7<sup>TH</sup> DEFENDANT**  
**JOYCE WANJA KIMANI ..... 8<sup>TH</sup> DEFENDANT**  
**LUCY MUGURE KUNGU ..... 9<sup>TH</sup> DEFENDANT**  
**AGNESS WAITHIRA NGUGI ..... 10<sup>TH</sup> DEFENDANT**  
**NYAMBURA MAINA ..... 11<sup>TH</sup> DEFENDANT**  
**GLADYS WAIRIMU GACEMA ..... 12<sup>TH</sup> DEFENDANT**  
**ESTHER WANGARI NJUGUNA ..... 13<sup>TH</sup> DEFENDANT**



DAVID AZUNGAGE CHERE .....	14 <sup>TH</sup> DEFENDANT
DANSON MAINA WAMBUKU .....	15 <sup>TH</sup> DEFENDANT
GEORGE NJOROGE MUREU .....	16 <sup>TH</sup> DEFENDANT
EUNICE WAIRIMU MBERE .....	17 <sup>TH</sup> DEFENDANT
PETER GICHUKI KING'ORI .....	18 <sup>TH</sup> DEFENDANT
PETER MACHARIA MAK .....	19 <sup>TH</sup> DEFENDANT
JAMES WAINAINA WAIGURU .....	20 <sup>TH</sup> DEFENDANT
MARY NJATHI RIBA .....	21 <sup>ST</sup> DEFENDANT
EMMAH WANDIA .....	22 <sup>ND</sup> DEFENDANT
PETER MUTURI MBUGUA .....	23 <sup>RD</sup> DEFENDANT
JAMES NGETHA GACHANGA .....	24 <sup>TH</sup> DEFENDANT
LAND REGISTRAR, NAKURU .....	25 <sup>TH</sup> DEFENDANT
GEORGE KIHUNA NGANGA & MARY NJERI KIHUNA .....	26 <sup>TH</sup> DEFENDANT
MARY WARUIRU MWITHAGA .....	27 <sup>TH</sup> DEFENDANT
JAMES MAKIMEI WAWERU .....	28 <sup>TH</sup> DEFENDANT
ELIZABETH WAITHIRA KIHARA .....	29 <sup>TH</sup> DEFENDANT
NANCY NJOKI KIRUBI .....	30 <sup>TH</sup> DEFENDANT
CAROLYNE MURUGI NJOROGE .....	31 <sup>ST</sup> DEFENDANT
PHILIP KURIA MWANGI .....	32 <sup>ND</sup> DEFENDANT
JAMES KAMAU MACHARIA & PAULINE WANJIKU MWANGI .....	33 <sup>RD</sup> DEFENDANT
SIMON IRERE WARINGO .....	34 <sup>TH</sup> DEFENDANT
PETER KARIUKI KINYANJUI .....	35 <sup>TH</sup> DEFENDANT
JAMES WAINAINA WAIGURU .....	36 <sup>TH</sup> DEFENDANT
AGNES WAITHIRA NGUGI .....	37 <sup>TH</sup> DEFENDANT
MARGARET WANGARI MWANGI .....	38 <sup>TH</sup> DEFENDANT
JOHN MWANGI MACHARIA .....	39 <sup>TH</sup> DEFENDANT
DANSON MAINA WAMBUGU .....	40 <sup>TH</sup> DEFENDANT
MARY WAMUYU NJOROGE .....	41 <sup>ST</sup> DEFENDANT
KAMAU KINUTHIA .....	42 <sup>ND</sup> DEFENDANT
MARY NDUTA NJOROGE .....	43 <sup>RD</sup> DEFENDANT
DORCAS WAIRIMU MINYUE .....	44 <sup>TH</sup> DEFENDANT



<b>ESTHER WANGARI NJUGUNA .....</b>	<b>45<sup>TH</sup> DEFENDANT</b>
<b>MACHAEL NJOROGE MACHARIA .....</b>	<b>46<sup>TH</sup> DEFENDANT</b>
<b>DORCAS WAIRIMU MINYUE .....</b>	<b>47<sup>TH</sup> DEFENDANT</b>
<b>DAVID AZUNGANE CHORE .....</b>	<b>48<sup>TH</sup> DEFENDANT</b>
<b>FRANCIS NGANGA MWANGI .....</b>	<b>49<sup>TH</sup> DEFENDANT</b>
<b>PETER MACHARIA MARK .....</b>	<b>50<sup>TH</sup> DEFENDANT</b>

## RULING

1. Pursuant to a Judgment delivered by the Court, on the 14<sup>th</sup> November, 2024, the Defendants/Applicants have now filed the present Application by way of a Notice of Motion dated 5<sup>th</sup> December, 2024 brought under the provisions of Sections 1A, 1B, 3A of the Civil Procedure Act, Order 46 rule 6 (1) & (2) and Order 51 rule 1 of the Civil Procedure Rules, and all enabling provisions of the law, where they seek for orders of stay of execution pending the hearing and determination of the appeal against the said judgement.
2. The application is supported by the grounds therein as well as by the sworn affidavit of Hakim Suleiman Rajab, an Advocate of the High Court of Kenya who deponed that being dissatisfied with the Judgement of the court of 14<sup>th</sup> November, 2024 where judgment had been entered for the Plaintiff against the Defendants. The Defendants had lodged a Notice of Appeal against the whole Judgement.
3. That were the stay orders not granted, substantial loss would result to the Defendants/Appellants as they would be forcefully evicted from the suit property, for which hundreds of families would be displaced and they may not be compensated by an award of damages. That the appeal herein had reasonable chances of success hence execution of the impugned judgement would render it nugatory and an academic exercise. That there had been no delay in bringing the instant Application. That further, the Defendants/Applicants were willing to abide by any conditions and terms of security as the court may deem fit to impose.
4. That the Plaintiff/Decree holder was likely to execute the decree at anytime hence the Defendants/Applicants stood to be prejudiced unless the orders sought herein are granted. He deponed that it was in the interest of justice that a stay of execution be granted so as to enable the intended appeal to proceed to hearing on merit. He thus urged the court to allow the instant application as prayed so as to enable the Defendants/Applicants pursue their right of Appeal and preserve the subject matter herein.
5. In his Replying affidavit of 22<sup>nd</sup> April 2025, and in opposition of the application the Plaintiff/Respondent deponed that none of the Defendants/Applicants had sworn any Affidavit in support of the Application stating that they would suffer any substantial loss were the orders sought not granted. That there had been no substantiated loss that they would suffer were the judgement not executed and the Court could not therefore be persuaded by the mere depositions of the Applicants' Advocates that the Applicants shall suffer substantial loss. That it behoved the Applicants to explain the substantial loss instead of leaving it to the Court's conjecture.
6. That the Applicants' had not also demonstrated to the Court how their intended Appeal to the Court of Appeal would be rendered nugatory were the orders sought not granted nor how they would be prejudiced by the execution. That the subject parcel of land shall never move from its geographical and/or physical location irrespective of the outcome of the Appeal.



7. That save for order No. 77 (iv) (v) (vi) and (vii) of the Judgement, all the other reliefs have been fully complied with and in any event they are incapable of being stayed.
8. That the Court ought to balance the interests of the Plaintiff on the one hand, who had succeeded in his case after being tormented by the Defendants from the year 2009, and the interests of the Defendants who desired to continue using the Plaintiff's land to his exclusion, and find in his favour because the land would always be available should the Applicants succeed on appeal.
9. That should the Honorable Court grant the Applicants the order of stay of execution of the Judgment delivered on 14th November 2024, that they be ordered:-
  - i. to deposit in Court, the original Titles set out in paragraph 1(ii) of the Judgment delivered within 30 days from the date of the Ruling, pending the outcome of the intended Appeal.
  - ii. That they deposit in this Court a sum of Ksh 5,000,000/= (Five million) only being security for costs within the next 30 days of the Court's Ruling
  - iii. (iii) In the event of default on any or both of the above conditions, execution of the judgment delivered on 14th November 2024 shall proceed against the Defendants.
10. Parties took directions to have the Application herein disposed of by way of written submissions for which only the Respondent filed his submissions dated the 22<sup>nd</sup> April 2025 wherein he submitted that the Applicants' affidavit in support of their Application ought to have been sworn by the Defendants themselves or one of them and further that the same did not state the source of the source of the Advocate's information.
11. That the court in its impugned judgement delivered on 14<sup>th</sup> November 2024, had found that all Defendants' Title Deeds to have been fraudulently acquired wherein immediate cancellation of all of them had been ordered as well as their vacation from the suit parcel of land, within 45 days in default whereof they should be evicted from the said land.
12. That the Defendants had for over two decades denied the Plaintiff, the use of this land which was unfair That as much as the Defendants had a right to pursue their appeal in the Court of Appeal, the Plaintiff was equally entitled to enjoy the fruits of his success in this matter.
13. That the Applicants' Counsel had not demonstrated how the cancellation of the Title Deeds or eviction of his clients would affect them, what substantial loss they would suffer were the orders not granted. Indeed, no evidence had been placed before the court that they had erected permanent buildings on this land. No evidence had been brought forth that the intended Appeal would be rendered nugatory were the orders herein sought not granted.
14. That were the Applicants to succeed, the Court of Appeal would still restore the cancelled titles to them and restore them back to the subject parcel of land. That the Applicants' Application dated 5<sup>th</sup> December 2024 lacked merit and it should be dismissed with costs.

#### **Determination.**

15. On 19<sup>th</sup> February 2025, parties took directions to have the Application dated the 5<sup>th</sup> December 2014 disposed of through the filing of written submissions within 14 days. The matter was slated for mention to confirm compliance and to take a date for the ruling on the 17<sup>th</sup> March 2025 on which day none of the parties had complied. The court extended the date for compliance with a further 14 days to comply and the delivery of the Ruling was set for the 29<sup>th</sup> May 2025. As I write writing the Ruling, only the Respondent had complied.



16. It is now a settled practice under the new constitutional dispensation that filing of written submissions is the norm as written submissions serve the purpose of expedience and amounts to addressing the court on the evaluation of the evidence of each party and analysis of the law. It is therefore trite that an Applicant who fails to file his submissions on an application as ordered by the court is deemed as a party who has failed to prosecute his application and therefor that application is liable for dismissal. The filing of submissions having been ordered, and this court having extended time for compliance without compliance, the failure by the Applicant to exercise the leave granted to them to file written submissions clearly demonstrates inertia and inordinate delay, lack of interest and/or seriousness on the Applicant's part in the prosecution of the matter.
17. In *Elaki v District Land Registrar Vihiga & another* (Civil Appeal 220 of 2019) [2021] KECA 340 (KLR) (17 December 2021) (Judgment), the Court of Appeal at paragraph 17 had observed as follows:
- “Despite the clear orders of the court, the appellant’s counsel failed to file the written submissions. It is a worrying trend when counsel as officers of the court blatantly choose to disregard court orders of this nature that are intended to further the interests of justice by expediting court proceedings. Again, no reasons were advanced for this failure.”
18. The Court of Appeal in *Rowlands Ndegwa and 4 Others v County Government of Nyeri and 3 Others; Agriculture, Fisheries and Food Authority & Another* (Interested Parties) [2020] eKLR, citing with approval the decision of the High Court in, *Winnie Wanjiku Mwai v Attorney General & 3 others* [2016] eKLR, observed as follows:
- “With regard to dismissal for want of prosecution, there are indeed no hard and fast rules as to the manner in which the inherent power and discretion to dismiss an action for want of prosecution is to be exercised. It is however generally accepted that dismissal will be invited if there should be a delay in the prosecution of the action and the respondent is prejudiced by the delay with attention also being paid to the reasons for the inactivity....”
19. The mode of hearing having been taken by the parties, and there having been no compliance by the Applicant, I am persuaded to dismiss the main motion, which I now do, with costs.

**DATED AND DELIVERED VIA MICROSOFT TEAMS AT NAIVASHA THIS 29<sup>TH</sup> DAY OF MAY 2025.**

**M.C. OUNDO**

**ENVIRONMENT & LAND – JUDGE**

