



REPUBLIC OF KENYA



**Wangombe & another v Mureithi & another (Environment and Land Appeal E029 of 2024) [2025] KEELC 4109 (KLR) (23 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4109 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NYERI  
ENVIRONMENT AND LAND APPEAL E029 OF 2024**

**JO OLOLA, J  
MAY 23, 2025**

**BETWEEN**

**TIMOTHY MURIITHI WANGOMBE ..... 1<sup>ST</sup> APPELLANT**

**LYDIA NYOKABI MURIITHI ..... 2<sup>ND</sup> APPELLANT**

**AND**

**BERNICE WAMUYU MUREITHI ..... 1<sup>ST</sup> RESPONDENT**

**JOSEPH NJARAMBA WANDIMI ..... 2<sup>ND</sup> RESPONDENT**

**RULING**

1. By the Notice of Motion date 24<sup>th</sup> September, 2024, Timothy Muriithi Wangombe and Lydia Nyokabi Muriithi (the Appellants) pray for an order that the court be pleased to order a stay of execution of the Ruling and order made on 5<sup>th</sup> September, 2024 in Nyeri (CMELC No. 201 of 2018 pending the hearing and determination of the Appeal.
2. The application is supported by an Affidavit sworn by the 1<sup>st</sup> Appellant and is premised on the grounds that:
  - i. The Ruling and Orders issued on 5<sup>th</sup> September 2024 are for the eviction of the Appellants within 30 days;
  - ii. The said orders have no basis from the Decree issued in the said matter;
  - iii. Eviction would not only be unlawful but would amount to substantial loss and result in hardship in respect of the applicants; and
  - iv. The execution of the orders is likely to render the Appeal nugatory.



3. Joseph Njaramba Wandimi (the 2<sup>nd</sup> Respondent) is opposed to the grant of the orders sought. In his Replying Affidavit sworn on 11<sup>th</sup> October, 2024, the 2<sup>nd</sup> Respondent avers that it has been three (3) years later and the Appellants are yet to file the Record of Appeal or prosecute their Appeal.
4. The 2<sup>nd</sup> Respondent further avers that from the year 1989 when the boundary dispute started, he has not been able to use and cultivate the portion of land and as such he continues to suffer great loss and prejudice as the Appellants continue to occupy his portion of land.
5. I have carefully perused and considered the Appellant's application as well as the response thereto by the 2<sup>nd</sup> Respondent. I have similarly perused and considered the submissions and authorities placed before me by the Learned Advocates representing the parties.
6. By their application before the Court, the two Appellants pray for an order of stay of execution of the orders issued on 5<sup>th</sup> September, 2024 in Nyeri CMELC Case no. 201 of 2018.
7. Order 42 Rule 6(2) of the Civil Procedure Rules, 2010 provides for stay of execution as follows: -
  - “2. No order for stay of execution shall be made under subrule (1) unless—
    - (a) the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and
    - (b) such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.”
8. As was stated in *RWW v EKW* [2019] eKLR:

“The purpose of an application for stay of execution pending an appeal is to preserve the subject matter in dispute so that the rights of the appellant who is exercising the undoubted right of appeal are safeguarded and the appeal if successful, is not rendered nugatory. However, in doing so, the court should weigh this right against the success of a litigant who should not be deprived of the fruits of his/her judgment. The court is also called upon to ensure that no party suffers prejudice that cannot be compensated by an award of costs.”
9. From the material placed before the court, it is evident that the Appellants herein had instituted Nyeri CMELC Case No. 201 of 2018 seeking a declaration that they had become entitled by way of adverse possession to a portion of land measuring some 3 acres and registered in the Respondents' name. The Appellants' suit was dismissed on 20<sup>th</sup> May, 2021.
10. It was also apparent that being aggrieved by the said determination, the Appellants lodged a Memorandum of Appeal against the same in Nyeri ELCA No. E037 of 2021 which remains pending for determination. It is evident that as the Appeal remained pending, the 2<sup>nd</sup> Respondent moved back to the trial court and filed an application seeking for eviction orders against the Appellants herein. That is the application that was allowed on 5<sup>th</sup> September, 2024 wherein the Appellants were granted 30 days to comply with the boundaries subsequently established by the Land Registrar or face eviction.
11. From a perusal of Paragraphs 4 and 5 of the 2<sup>nd</sup> Respondent's Replying Affidavit, it is evident that he is aware of the said ELCA No. E037 of 2021 wherein the Appellants contest the dismissal of their suit seeking a declaration that they had acquired a portion of the suit property by way of adverse possession.



12. In the circumstances herein, it was not clear to me how the Respondents had obtained an order of eviction in an Originating Summons in which they had not filed a counterclaim. What was clear was that if the Appellants were to be evicted from the Suitland, their appeal in the said ELCA No. E037 of 2021 would be rendered nugatory.
13. In the premises, I think it is only fair and just that this court preserves the subject matter in dispute. Accordingly, I find merit in the Motion dated 24<sup>th</sup> September, 2024 and allow the same in terms of Prayer 'C' thereof.
14. The Costs of this application shall abide the outcome of the Appeal.
15. Orders accordingly.

**RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 23<sup>RD</sup> DAY OF MAY, 2025**

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**J.O. OLOLA**

**JUDGE**

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. Ms. Ngari holding brief for Nderi Advocate for the Appellant
- c. Mr. Kebuka Wachira Advocate for the Respondent

