



**Kipkurui (Suing as the Administrator of the Estate of the Late Kipkeori
Muyila - Deceased) v Abdi & 2 others (Environment and Land Appeal
E062 of 2024) [2025] KEELC 4329 (KLR) (9 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4329 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E062 OF 2024**

MAO ODENY, J

JUNE 9, 2025

BETWEEN

**PETER MUIRA KIPKURUI (SUING AS THE ADMINISTRATOR OF THE
ESTATE OF THE LATE KIPKEORI MUYILA - DECEASED) APPLICANT**

AND

ADIJAH ABDI 1ST RESPONDENT

SIMON KIMWE GATHII 2ND RESPONDENT

LAND REGISTRAR, NAKURU 3RD RESPONDENT

RULING

1. This ruling is in respect of a Notice of Motion dated 21st November, 2024 by the Appellant/Applicant seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the appeal this Honourable court be pleased to issue a temporary injunction restraining the 1st and 2nd Respondents by themselves, their agents, and or servants from entering, selling, disposing of, evicting, demolishing, and or interfering in any way with the Plaintiff's parcel of land known as Naivasha/kiambogo/2007 in which the Appellant resides with his family in any way whatsoever.
 - d. That in the alternative, this Honourable court be pleased to make an order that the status quo on the suit property be maintained pending the hearing and determination of the appeal.



- e. That the OCS Kiambogo Police Station does enforce the orders issued by this Honourable Court.
 - f. That the costs of this application be provided for.
2. The application was supported by the annexed affidavit of Peter Muira Kipkurui, the Appellant/Applicant who deponed that being dissatisfied with the trial court's judgment dated 30th October, 2024 in Nakuru CM Misc No. 265 of 2022 consolidated with Nakuru CMELC No. 179 of 2022, he instructed his advocates to file an appeal.
 3. He further deponed that he lives on the suit land together with his family and will suffer substantial loss if an order of injunction against the 1st and 2nd Respondents who may proceed to evict them or dispose the suit property. It was his deposition that there is need to preserve the substratum of the appeal.
 4. The Respondent Adija Ali Abdi filed a Replying Affidavit sworn on 17th December, 2024 and deponed that the application is an abuse of the court process as the same is premature as execution process has not yet commenced. She also deponed that any loss can be compensated by way of damages and that the Applicant has not annexed any decree for the orders sought to be stayed.

Applicant/appellant's Submissions

5. Counsel for Appellant filed submissions dated 6th February, 2025 and submitted that the grant of a temporary injunction is an exercise of judicial discretion and relied on the cases of *Giella vs Cassman Brown & Co Ltd 1973 E.A 358*, *Mrao vs First American Bank of Kenya Limited & 2 others (2003) KLR 125*. Counsel submitted that the Applicant/Appellant has demonstrated that he does have a prima facie case as the Memorandum of Appeal raises triable issues.
6. On the issue whether the Appellant will suffer irreparable harm that cannot be compensated by way of damages, counsel submitted that the Applicant is apprehensive that the 1st and 2nd Respondents will take the land rendering the Applicant homeless and destitute and relied on the case of *Nguruman Ltd vs Jan Bonde Nielsen CA No 77 of 2012*.
7. On the issue of the balance of convenience, counsel submitted that the Appellant has rights and interests on the suit property and the balance of convenience favors the Appellant and relied on the case of *Mugah vs Kunga [1988] KLR 748* and submitted that a prayer of status quo to be maintained has been made pending the hearing and determination of the appeal.

Respondents' Submissions

8. Counsel for the Respondent filed submissions dated 17th December, 2024 and identified the issue for determination as: whether the conditions for grant of an injunction have been fulfilled.
9. Counsel submitted that the Applicant has not satisfied the three conditions in the case of *Giella vs Cassman Brown & Co Ltd (1973) E.A 358* as evidence led was that all documents produced by the Appellant did not originate from the Lands Department and thus a prima facie case has not been established.
10. Counsel further submitted that if the Applicant is successful, he can be compensated by way of damages as the photos presented show wooden structures whose value can be ascertained. Counsel submitted that the balance of convenience favors the Defendant his title having been recognized by the state and relied on the cases of *Mrao Ltd vs First American Bank of Kenya Ltd & Others [2003] eKLR* and *Nguruman Ltd vs Jan Bonde Nielsen & 2 others 2014 eKLR* and urged the court not to allow the Application.



Analysis And Determination

11. The issue for determination is whether the Applicant/Appellant is entitled to an order of temporary injunction.
12. This court has discretionary power under Order 42 Rule 6(6) to grant orders of temporary injunction pending hearing and determination of an appeal on such terms as it deems fit as long as the procedure for filing an appeal from subordinate court has been complied with. It states as follows:

“Notwithstanding anything contained in sub rule (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”
13. This is an appeal against a Judgment of the lower court and not of this court, it follows, therefore, that this court has jurisdiction to hear an application for the grant of a temporary injunction pending an appeal.
14. The principles for the grant of a temporary injunction pending appeal are well settled. In the case of Patricia Njeri & 3 Others vs. National Museum of Kenya [2004] eKLR, the Learned Judge held that the principles applicable in considering an application for grant of orders of temporary injunction pending appeal are as follows:
 - a. “An order of injunction pending Appeal is a discretionary which will be exercised against an Applicant whose Appeal is frivolous.
 - b. The discretion should be refused where it would inflict great hardship than it would avoid.
 - c. The Applicant must show that to refuse the injunction would render the appeal nugatory.
 - d. The court should also be guided by the principles in Giella Vs. Cassman Brown [1973] EA 358.”
15. The principles for the grant of a temporary injunction pending hearing and determination of a case are well settled and an applicant must fulfill them before such orders can be granted. The Applicant must first establish a prima facie case with a probability of success.
16. The Appellant submitted that he has filed a Memorandum of Appeal, which raises triable issues and further that they have been in occupation of the suit land with the family of the late Kipkeori Muyila for many years and some relatives have been buried on the suit parcel of land.
17. The court is not required to go into the merits or the demerits of the Appeal but, to look at the arguability of the appeal and whether it raises issues that need to be heard on merit. An arguable appeal is not one which must succeed but one which is not frivolous; and that a single arguable ground of appeal would suffice to meet the required threshold.
18. The principles as to whether an appeal is arguable were summarized in the case of Stanley Kang’ethe Kinyanjui Vs Tony Ketter & 5 Others [2013] eKLR. The Applicant must prove the arguability and the nugatory aspect of the Appeal. Is the Appeal arguable and if so will the Appeal be rendered nugatory if an order of injunction is not issued. If the two are answered in the affirmative then the court can grant the orders as prayed.



19. In the case of Mbuthia – Versus - Jimba credit Corporation Limited 988 KLR1, the court held that:

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”

20. On whether the Appellant/Applicant might suffer irreparable injury, which cannot be adequately compensated by an award of monetary damages, he submitted that nothing bars the 1st and 2nd Respondents from evicting him and his family from the suit property during pendency of the appeal. The Appellant submitted that there are burial sites on the property and no amount of damages will be sufficient if the property is sold to third parties. The Appellant is in occupation of the suit property and the same is not disputed.

21. In the case of Nguruman Limited – Versus - Jan Bonde Nielsen & 2 others [2014] eKLR, the Court of Appeal held:

“On the second factor, that the applicant must establish that he “might otherwise” suffer irreparable injury which cannot be adequately remedied by damages in the absence of an injunction, is a threshold requirement and the burden is on the applicant to demonstrate, prima face, the nature and extent of the injury. Speculative injury will not do; there must be more than an unfounded fear or apprehension on the part of the applicant. The equitable remedy of temporary injunction is issued solely to prevent grave and irreparable injury; that is injury that is actual, substantial and demonstrable; injury that cannot “adequately” be compensated by an award of damages. An injury is irreparable where there is no standard by which their amount can be measured with reasonable accuracy or the injury or harm is such a nature that monetary compensation, of whatever amount, will never be adequate remedy.”

22. In the case of Amir Suleiman – Versus - Amboseli Resort Limited [2004] eKLR the court held that:

“The court in responding to prayers for interlocutory injunctive reliefs should always opt for the lower rather than the higher risk of injustice.”

23. I have considered the application, the submissions by counsel, the Memorandum of Appeal and find that the Applicant has met the threshold for grant of a temporary injunction pending the hearing of the Appeal. I therefore issue the following orders:

- a. A temporary injunction is hereby issued restraining the 1st and 2nd Respondents by themselves, their agents, and or servants from entering, selling, disposing of, evicting, demolishing, and or interfering in any way with the parcel of land known as Naivasha/kiambogo/2007 pending the hearing and determination of this appeal.
- b. The Appellant shall file and serve the record of appeal within 45 days hereof failure to which the injunctive orders issued in (a) above shall lapse.
- c. Costs of the application shall be in the cause.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 9TH DAY OF JUNE 2025.

M. A. ODENY

JUDGE

