



**Maina & another v Kingori (Environment and Land Appeal
E011 of 2023) [2025] KEELC 5163 (KLR) (10 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5163 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E011 OF 2023**

**JO OLOLA, J
JULY 10, 2025**

BETWEEN

GERADINE NJAMBI MAINA 1ST APPELLANT

JOSEPH MAINA THEURI 2ND APPELLANT

AND

FRANCIS MAINA KINGORI RESPONDENT

RULING

1. By the Notice of Motion dated 4th June, 2024, Geraldine Njambi Maina (the 1st Appellant) prays for the following:
 1. Spent;
 2. That the Honourable Court be pleased to stay execution of Decree pursuant to the Judgment delivered on 20th July, 2022 at Othaya in ELC Case No. E026 of 2021 and all consequential orders arising therefrom pending the hearing and determination of the Appeal;
 3. That the Honourable Court be pleased to grant a permanent injunction restraining the Plaintiff (and) his servants from interfering and or commuting waste (sic) in the suit land title number Mahiga/Kamoko/1453 pending the final determination of appeal;
 4. That the Honourable Court be pleased to exercise its inherent power and issue any other (or) further orders in the interest of justice; and
 5. Costs be in the intended appeal.
2. The application is supported by an Affidavit sworn by the 1st Appellant and is premised on the grounds that:
 - i. Judgment was delivered on 20th July, 2022



- ii. There is likelihood that the Plaintiff may execute the decree and the same would be prejudicial to the hearing and determination of the intended appeal;
 - iii. The annexed Memorandum of Appeal raises arguable grounds of Appeal with chances of success; and
 - iv. Unless the Court issues an order of stay, the Appeal shall be rendered nugatory and the 2nd Defendant shall suffer irreparable damage.
3. Francis Maina Kingori (the Respondent) is opposed to the application. In his Replying Affidavit sworn on 15th July, 2024, the Respondent avers that the applications is a non-starter based on an incompetent Appeal which was filed out of time. He avers that the decree sought to be stayed has already been executed and the suit land was sold to a third party by way of a public auction.
 4. I have carefully perused both the application and the response thereto. Though the parties were granted a chance to file submissions none of them filed submissions.
 5. By her application before the court, the 1st Appellant urges the court to stay execution of the decree arising from the Judgment delivered on 20th July 2022 in Othaya PMELC Case No. E026 OF 2021.
 6. In respect of orders for stay of execution, Order 42 Rule 6(2) of the Civil Procedure Rules, 2010, provides that:
 2. No order for stay of execution shall be made under sub-rule (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.”
 7. In the matter herein, it is apparent from a perusal of the record that the Respondent had entered into a Sale Agreement for the parcel of land Known as Mahiga/Kamoko/1453 with the 2nd Appellant who is the 1st Appellant’s husband. As it turned out, the 1st Appellant was unhappy with the sale transaction and she lodged a caution over the property claiming beneficiary interest.
 8. The sale having been frustrated the Respondent sued the couple seeking an order directing the Land Registrar, Nyeri to remove the caution and to have the property registered in the Respondent’s name. In the alternative, the Respondent had sought an order compelling the 2nd Appellant to refund the purchase price paid of Kshs. 600,000/= together with a penalty of 30% as provided in the sale agreement.
 9. In the judgment delivered on 20th July, 2022, the trial court ordered the 2nd Appellant to refund the sum of Kshs. 600,000/= together with interest. About two (2) years later, on 21st August, 2024, the 1st Appellant lodged a Memorandum of Appeal dated the same day. Some three (3) months later, she filed the application before the court seeking an order of stay of execution.
 10. I have looked at the Supporting Affidavit to the application. No explanation whatsoever has been proffered as to why it took the Appellant a period of two years to file the application and it was clear to me that there was no proper Appeal on record the same having been filed outside time and without the leave of the court.



11. From a perusal of the Respondent's Replying Affidavit, it was also evident that execution had long taken place through the sale of the subject parcel of land which has since been transferred into the name of a third party.
12. It follows that the application before me was not only filed after an inordinate period of delay but that the same has since been overtaken by events.
13. In the premises, I find no merit in the Motion dated 4th June, 2024. The same is dismissed with costs to the Respondent.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 10TH DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

Ms. Firdaus Court Assistant.

No Appearance for the Appellants

Mr. Kimunya Advocate for the Respondents

