



REPUBLIC OF KENYA



Ntiapuyok & another v Puffins Investment Limited & 2 others (Environment and Land Case Civil Suit 203 & 222 of 2017 (Consolidated)) [2025] KEELC 5204 (KLR) (10 July 2025) (Ruling)

Neutral citation: [2025] KEELC 5204 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO
ENVIRONMENT AND LAND CASE CIVIL SUIT 203 & 222 OF 2017 (CONSOLIDATED)**

MD MWANGI, J

JULY 10, 2025

BETWEEN

KISHORO LEONYO NTIAPUYOK 1ST PLAINTIFF

WILSON WUANTAI KISHORO 2ND PLAINTIFF

AND

PUFFINS INVESTMENT LIMITED 1ST DEFENDANT

LAND REGISTRAR, KAJIADO 2ND DEFENDANT

ATTORNEY GENERAL 3RD DEFENDANT

(In respect of the Notice of Motion dated 19th June 2024 seeking for an order of injunction against the Defendants and an order of stay of execution of the judgment delivered on 13th May 2024)

RULING

1. Judgment in this matter was delivered on 15th May 2024 by my predecessor, Gicheru J. The Plaintiffs/Applicants being aggrieved by the said judgment intend to appeal against the whole judgment in the Court of Appeal. Awaiting the determination of the appeal, the Plaintiff seeks an order of stay of execution of the impugned judgment and an order of injunction restraining the Defendants from selling, transferring and or disposing of the suit property described as L.R. No. Kjd/Kaputiei-North/1426.
2. The Plaintiffs/Applicants have enumerated various grounds on the face of their application and in the supporting affidavit sworn by Kishoro Leponyo Ntiapuyok at Nairobi on 19th June 2024 and the further affidavit by Wilson Guantai Kishoro. The Applicants assert that before the determination of this matter, the 1st Defendant/Respondent had been holding in abeyance an intended sale of the suit



property to East Africa Portland Housing Sacco Limited. The Applicants are therefore fearful that the intended sale may be perfected at any time before their appeal can be heard.

3. The Applicants aver that they have an arguable appeal with a high probability of success which may be rendered nugatory if the orders of stay and injunction sought are not granted. Further the Applicants argue that their application has been brought without any unreasonable delay.
4. In the supporting affidavit, the deponent deposes that their written submissions though filed electronically and physically were not considered by the court in making its judgement since they were not placed before the judge.
5. The deponent asserts that he resides in the suit property with his family which is at a risk of being sold. He attaches a letter from M/S. Mutunga & Company Advocates confirming that the intended sale to East Africa Portland Housing Sacco Limited was held in abeyance awaiting the determination of this suit. The deponent affirms that the said law firm is indeed holding funds in the extent of Kshs. 70,000,000/- already paid by the intending purchaser.
6. The deponent states that he and his co-Applicant stand to suffer irreparable loss and damage unless the injunction is granted forestalling the intended sale, or if an order of stay of execution is not granted.

Response by the 1st Defendant/Respondent.

7. The 1st Defendant/Respondent's response to the Plaintiffs' application was by way of a replying affidavit sworn by one KARTIC K. SHAH, a director of the 1st Defendant/Respondent company on 5th December 2024.
8. The deponent asserts that the Plaintiffs' application is not only frivolous and vexatious but also devoid of merit. It is but an attempt to delay the ends of justice and deprive the 1st Defendant/Respondent of the fruits of its judgment. Since it acquired the suit property in 1991, it has not had the opportunity to enjoy its proprietary rights over the suit property.
9. The Defendant/Respondent asserts that the Applicants have not demonstrated any substantial loss they will suffer unless the orders sought are granted. It further alleges that the Applicants had filed another application in the Court of Appeal under Civil Application No. E 322 of 2024 seeking the same orders.
10. In their further affidavit sworn by WILSON WUANTAI KISHORO, the Applicants while admitting filing a similar application before the Court of Appeal asserted that the same was struck out on 16th September 2024 to give way to this application to forestall the possibility of varying orders. The order of the Court of Appeal is attached to the further affidavit as annexure "WWK1".

Submissions.

11. Both the Applicants and the 1st Defendant/Respondent filed their respective submissions. They further had the opportunity to orally highlight them before the court, on 22nd May 2025. The submissions and the record of the proceedings of 22nd May 2025 form part of the record of this court.

Issues for determination.

12. There is only one issue for determination and that is whether the orders sought by the Applicants should issue.



Analysis and determination.

13. Though the Applicants pray for both orders of injunction and stay of execution pending appeal, they both serve the same purpose. They should ideally be sought as alternatives; one as an alternative of the other. The purpose of both orders 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.
14. In respect to the order of injunction pending appeal, Visram J (as he then was) in the case of Patricia Njeri & 3 others –vs- National Museum of Kenya (2004) eKLR, stated as follows;

“An order of injunction pending appeal is a discretion which will be exercised against an Applicant whose appeal is frivolous. The discretion should be refused where it would inflict greater hardship than it would avoid. The Applicant must show that to refuse the injunction would render the appeal nugatory. The court should also be guided by the principles in *Giella –vs- Cassman Brown* (1973) E.A. 358”.
15. The grounds on the face of the Applicants’ application are more in favour of an injunction than an order of stay pending appeal. Both, as I have already observed are orders to be issued at the discretion of the court.
16. In the case of Shem David Mukumbi –vs- Alice Nzula Kilonzo (2021) KEHC 13430 (KLR) Odunga J (as he then was) observed that in light of the overriding objective stipulated in Sections 1A and 1B of the *Civil Procedure Act*, the court is no longer limited to the foregoing provisions. The courts are now enjoined to give effect to the overriding objective in the exercise of their powers under the *Civil Procedure Act* or in the interpretation of any of its provisions.
17. Odunga J opined that;

“All the pre-overriding objective decisions must now be looked at in the light of the said provisions. This does not necessarily imply that all precedents are ignored but the same must be interpreted in a manner that gives effect to the said objective. What is expected of the court is to ensure that the aims and intendment of the overriding objective as stipulated in Section 1A as read with Section 1B, are attained”.
18. The court in this case notes that the application herein was filed without unreasonable delay. The Applicants have further demonstrated with material evidence that the subject matter in dispute is at the imminent risk of sale which off course would render their appeal an academic exercise. With that in mind and considering the above propositions against the grounds in support of the application before me and further considering this court’s obligation to uphold the overriding objective, I am persuaded that it is in the interest of justice that an order of injunction be granted in favour of the Applicants which I hereby grant as sought, restraining the Defendants from selling, transferring and or disposing of the suit property pending the hearing and determination of the appeal filed in the Court of Appeal.
19. The costs of the application shall be in the cause.

It is so ordered.

DATED SIGNED AND DELIVERED AT KAJIADO VIRTUALLY THIS 10TH DAY OF JULY 2025.

M.D. MWANGI

JUDGE



In the virtual presence of:

Mr. A. Masika for the Plaintiffs/Applicants

Ms. Kyalo h/b for Mr. Githuka for the 1st Defendant/Respondent

N/A by the 2nd and 3rd Defendants

Court Assistant: Mpoye

M.D. MWANGI

JUDGE

