



**Maguta v Wainaina (Environment and Land Appeal E035 of 2024)  
[2025] KEELC 3875 (KLR) (20 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 3875 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MURANGA  
ENVIRONMENT AND LAND APPEAL E035 OF 2024**

**MN GICHERU, J**

**MAY 20, 2025**

**BETWEEN**

**AGNES WANGARI MAGUTA ..... APPELLANT**

**AND**

**MARIKO MWANGI WAINAINA ..... RESPONDENT**

**RULING**

1. This ruling is on the notice of motion dated 28-3-2025. The motion which is by the Appellant is brought under Orders 42 rule 6(2) and 51 rules 1 and 3 of the Civil Procedure Rules, Sections 1A,1B,3A, 3B and 63(e) of the *Civil Procedure Act*, Article 159 of *the Constitution* and all other enabling provisions of the law.

The motion seeks the following orders.

2. A temporary injunction restraining the Respondent and those claiming through him from further interfering with the suit land and property such as tea bushes following the unlawful, illegal and unprocedural demolition and destruction of the homes of the Appellant and her brother Daniel Waweru.
3. The Court to order that the status quo be maintained, that is to say, the Appellant to stay in occupation of the suit premises until the appeal herein is heard and determined.
4. That the parties observe the directions to file submissions and have the same mentioned on 12<sup>th</sup> May, 2025.
5. That the Respondent and his advocate be punished by this Court for failure to respect and honour its directives, orders, penal notices and the two be found to be in contempt of court procedures and processes.



2. The motion is based on six(6) grounds and it is supported by an affidavit dated 28-3-2025 and a supplementary one dated 5-4-2025. The gist of grounds and the two affidavits is as follows.

One, on 2-2-2025, this court directed the parties in this case to file their submissions and have the appeal mentioned on 12/5/2025. Two, at every mention, this court issued penal notices to the parties to observe court orders and processes. Three, the Applicant, in her applications both in his court and the lower court had applied for the extension of the 30 day stay of execution granted by the lower court on the basis that if execution by way of demolition of her home and that of her brother were to take place, she would suffer irreparable harm and damage and the appeal would be rendered nugatory. Four, in disregard of the court's penal notices and procedures, the Respondent proceeded to carry out the demolition without following the proper procedure. Five, no demolition order was served upon the Appellant. Six, it is in the interests of justice that the orders sought are issued so as to maintain the dignity of the Court. Seven, the Appellant has beneficial interest in the suit land being the daughter of the original registered owner of the suit land, Samuel Riano Mwangi and being one of the administrators of his estate together with her late brother. Eight, the bulk of the tea bushes that she has been tendering for decades were planted by her parents while she and her late brother planted the rest.

For the above and other reasons, she prays for the orders in the motion.

3. The motion is opposed by the Respondent who has sworn a replying affidavit dated 4-4-2025 in which he deposes as follows. One, the eviction is complete pursuant to an eviction order of the lower court dated 28-3-2025 and there is therefore nothing to injunct or stay. Two, the Applicant who is a vexatious litigant filing a flurry of applications on the same issues cannot eat her cake and have it. Three, the Applicant does not own the tea bushes. Four, several applications for stay of execution have been declined for lack of substance and this one should face the same fate. Finally, the application dated 28-3-25 does not meet the stringent requirements in the celebrated case of Giella Vs. Cassman Brown and the orders sought cannot be issued as the Appellant has already been evicted.
4. I have carefully considered the motion in its entirety including the grounds, the two affidavits by the Appellant and the one by the Respondent. I find that the following issues arise.
  - i. Whether the Appellant seeks an order of injunction or a stay of execution.
  - ii. Whether the eviction of the Appellant from the suit land is complete.
  - iii. Whether the appeal will be rendered nugatory if the orders sought are not allowed.
  - iv. Whether the motion dated 28-3-2025 meets the threshold in Order 42 rule 6 (2) of the Civil Procedure Rules.
5. On the 1<sup>st</sup> issues, I find that the Appellant seeks an order of stay of execution and the motion clearly cites Order 42 rule 6(2) of the Civil Procedure Rules and not Order 40 of the same rules which deals with injunctions.
6. On the second issue, I find that the eviction of the Appellant from the suit land is not complete. The demolition of the houses may be complete but there is the evidence of her occupation of the suit land and ownership of the tea bushes and other crops. Since the occupation of the suit land by the Appellant and her brother was not recent, it was prudent to allow her to continue in occupation until she exhausted her rights of appeal. The hurried partial eviction should not have happened with this appeal pending.
7. The appeal will not be rendered nugatory if the orders sought are not granted because land is immovable property but why change the status quo when litigation has not ended? Why disturb the



party in possession by demolishing homes which the demolisher could benefit from if the Appellant's appeal is dismissed. Violent demolitions, with litigation still pending, are not proper. They are not to be encouraged.

8. Coming to the final issue, I find that the motion meets the threshold in Order 42 rule 6 (2) of the Civil Procedure Rules. The Appellant stands to suffer substantial loss if she evicted from land that she has occupied for long and where she had a house, has tea and other crops growing. Secondly, the motion was filed without delay and it sought to forestall the eviction. Thirdly, there is no need to ask the Appellant to give security for the due performance of the decree because the suit land will be available to the Respondent in case the Appellant's appeal is not successful.

9. For the above stated reasons, I find merit in the motion dated 28-3-2025 which I allow in terms of prayer 3 only

Costs in the cause.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 20<sup>TH</sup> DAY OF MAY, 2025.**

**M.N. GICHERU**

**JUDGE.**

Delivered online in the presence of; -

Court Assistant – Mwangi Njonjo

Appellant's Counsel – Mr. Kimemia

Respondent's Counsel – Mr. T.M. Njoroge

