



**Michiri v Kobia (Environment and Land Appeal E029 of 2025)
[2025] KEELC 4035 (KLR) (19 May 2025) (Ruling)**

Neutral citation: [2025] KEELC 4035 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MERU
ENVIRONMENT AND LAND APPEAL E029 OF 2025**

JO MBOYA, J

MAY 19, 2025

BETWEEN

M’HTIRIBI MUCHIRI & ANOTHER APPELLANT

AND

PAUL KOBIA & ANOTHER RESPONDENT

RULING

1. The Appellants/Applicants have approached the court vide the application dated the 11th April 2025 and wherein the appellants/applicants have sought various reliefs, namely; an order of stay of execution of the judgment and the decree on the lower court; and an order for preservation of the suit property pending the hearing on the appeal. The appellants have also sought for an order of costs.
2. The Application beforehand is supported by the affidavit sworn by the 2nd appellant/applicant and the same is sworn on the 11th April 2025 and to which the 2nd appellant has annexed a copy of the judgment of the lower court. Further, the deponent has also annexed a copy of the memorandum of appeal.
3. The Respondents have responded to the application by way of a replying affidavit sworn on the 6th May 2025 and wherein the respondents have contended that the order sought by the appellants/applicants cannot be granted. Further, the respondents have argued that the court has no jurisdiction to issue and or grant an order for preservation of the suit property which is akin to an order of temporary injunction. In the premises, the respondents have asked the court to dismiss the application.
4. The Application came up for hearing on the 19th May 2025; and whereupon the parties agreed to canvass the application by way of oral submissions. The court thereafter took note on the oral submissions that were ventilated and canvassed by and on behalf of the parties.
5. Suffice it to state that the submissions on behalf of the parties are on record. In any event, the 2nd appellant herein intimated to the court that the lower court had proceeded to and dismissed his [2nd appellant's] suit and hence the same required an order of stay. Furthermore, the 2nd appellant submitted



- that the respondents are likely to sell and dispose of the suit property during the pendency of the appeal. In this regard, the appellants sought an order for preservation of the suit land in the interim.
6. The Respondents, on the other hand, contended that the orders sought by the 2nd appellant herein could not be issued and or be granted by the court. In any event, it was contended that the dismissal of the suit in the lower court amounts to a negative order and hence the same is not capable of being stayed either in the manner sought or otherwise. Further, it was contended that the court lacks jurisdiction to grant the preservatory orders which are akin to an order of temporary injunction. In this regard, the court was called upon to dismiss the application with costs.
 7. Having reviewed the application, the affidavits filed by the parties and having considered the submissions on records, I come to the conclusion that the determination of the current application turns on two key issues, namely; whether the dismissal of the suit in the lower court is a negative order and if so, whether such an order can be stayed or otherwise; and whether the court has jurisdiction to grant the orders for preservation of the suit property or otherwise.
 8. Regarding the first issue, namely; whether the dismissal orders are negative orders and if so, whether the same are capable of stay. I wish to point out that where a court of law dismisses a suit, like in the instant case, the orders that do arise are negative orders. Negative orders are those orders wherein the party filing the suit or, better still, the application, is not commanded to do or to refrain from doing any act. The court simply dismisses the proceedings/action in question.
 9. Where a court issues a negative order, either by dismissing or striking out a suit [Civil Proceeding[s], such an order does not lend itself to stay of execution pending an appeal or otherwise.
 10. The position of the law that a negative order cannot be stayed has been highlighted and elaborated in a plethora of decisions. In the case of *Western College of Applied Sciences and Arts vs Oranga* (1976) eKLR, the court of appeal observed that a negative order cannot be stayed.
 11. Likewise, the court of appeal reiterated the same legal position in the case of *Oliver Collins Wanyama vs Engineering Regulatory Board (ERB)* (2019) eKLR; as well as in the case of *Charles Barongo Nyakeri vs the County Government of Kisii* [2020] eKLR, [see Paragraph 11 thereof.
 12. Additionally, the position was reaffirmed in the case of *Registered Trustee of Kenya Railways Pension scheme vs Milimo Muthomi and Co. Advocates* (2022) KECA.
 13. In particular, the court highlighted that a dismissal order is a negative order and thus the same [dismissal] order cannot be stayed.
 14. Bearing in mind the established and trite legal position (*supra*), I come to the conclusion that the prayer for an order of stay of execution is pre-mature and misconceived. Same is equally untenable in so far as there is no command issued by the court which is capable of stay and or suspension.
 15. Regarding the second issue, namely whether the court can grant a preservatory order in the manner sought, I wish to state that the legal import and tenor of the order herein is to restrain the respondent from utilizing the suit property which is currently registered in the name of the respondent. I beg to underscore that whereas the court has jurisdiction to grant an order of temporary injunction pending the hearing and determination of an appeal, such an order can only be granted where it is shown that the applicant has established a *prima facie* case. [See the provisions of Order 42 Rule 6 [6] of the Civil Procedure Rules 2010.
 16. Furthermore, it is not lost on the court that such an order must only issue where the applicant demonstrates that same is bound to suffer irreparable loss. [see the holding in the case of *Patricia Njeri & 3 Others V National Museum Of Kenya*[2004] eKLR



17. Taking into account the foregoing legal position, I beg to state that the applicant herein has not demonstrated that same is entitled to the order for preservation of the suit properties which order is akin to an order of temporary injunction. In any event, it is not lost on the court that the suit property belongs to and is registered in the name of the respondents and hence the respondents have the right to use the same until the certification of title is impeached by a court of law in accordance with the due process of the law. [See the provisions of Sections 24 and 25 of the [Land Registration Act](#) [2012].
18. Furthermore, the scope of the right of a registered land owner were also highlighted by the court in the case of *Moya Drift Farm Ltd vs Theuri* [1973] E.A 173 and wherein the court underscored that the land owner is entitled to absolute and exclusive possessory rights to his/her land.
19. Moreover, the court of appeal in the case of *Nguruman Ltd vs Jan Bonde Nielsen and others* [2014] eKLR he has also reaffirmed the position in the following manner;

“It must also be remembered that it is a serious thing to restrain a registered proprietor of a property over what is undeniably his unless there are justifiable grounds to do so”.
20. In view of the foregoing and taking into account that the legal import of sections 24 of the [Land Registration Act](#) 2012, I come to the conclusion that the applicants are entitled to the order of preservation of the suit land which belongs to the respondents.
21. Consequently, and in the premises, I am not persuaded and hence the orders that commend themselves to me are as hereunder:
 - i. The application dated the 11th April 2025 be and is hereby dismissed.
 - ii. Costs of the application be and are hereby awarded to the respondents

DATED, SIGNED AND DELIVERED AT MERU THIS 19TH DAY OF MAY 2025.

OGUTTU MBOYA, FCI Arb, CPM [MTI]

JUDGE.

In the presence of

Mutuma– Court Assistant

Mr. Ayub Anampiu for the Respondents

Mr. Jeremiah Mutwiri Muchiri - 2nd Appellant/applicant

No appearance for the 1st Appellant [who is reported to have died in 2022]

