



Ndungu & another v Kamau (Suing as an Administrator to the Estate of Damaris Wanjiku - Deceased) & another (Environment and Land Appeal E006 & E007 of 2024 (Consolidated)) [2025] KEELC 3922 (KLR) (19 May 2025) (Ruling)

Neutral citation: [2025] KEELC 3922 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MURANGA
ENVIRONMENT AND LAND APPEAL E006 & E007 OF 2024 (CONSOLIDATED)
MN GICHERU, J
MAY 19, 2025**

BETWEEN

NAHASHON MUGURO NDUNGU APPELLANT

AND

NELIUS WANJIKU KAMAU (SUING AS AN ADMINISTRATOR TO THE ESTATE OF DAMARIS WANJIKU - DECEASED) 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND APPEAL E007 OF 2024

BETWEEN

JAMES MWIRIGI MUNUKU APPELLANT

AND

NELIUS WANJIKU KAMAU (SUING AS AN ADMINISTRATOR TO THE ESTATE OF DAMARIS WANJIKU - DECEASED) 1ST RESPONDENT

THE HONOURABLE ATTORNEY GENERAL 2ND RESPONDENT

RULING

1. This ruling is on the notice of motion dated 21-2-2025. The motion which is by the Respondent in this appeal is brought under Sections 1A, 1B and 3A of *Civil Procedure Act*, Order 42 rule 6(1) and Order 43 of the Civil Procedure Rules and the and the inherent powers of the Court. It seeks the following residual orders.



3. That pending the hearing and determination of the Applicant's intended appeal, this Court be pleased to grant stay of execution of the judgment/decree or any other resultant orders made by the Court on 29-1-2025.
 4. That the Court makes such orders as it deems fit to meet the ends of justice.
 5. That the costs of this application be provided for.
2. The motion is based on nine (9) grounds and is supported by an affidavit of the Respondent dated 21-2-2025. In summary the Respondent urges as follows. Firstly, this court delivered a judgment in favour of the Appellant on 29-1-2025 setting aside the judgment of the lower court. Secondly, the Respondent is dissatisfied with the whole judgment and intends to appeal against it. Thirdly, the Respondent is apprehensive that the Appellant may dispose of the suit land or transfer it to third parties. Fourthly, the Respondent is ready and willing to offer security for obtaining these orders. Fifthly, if the order of stay is not made, the Respondent will suffer irreparable damage and substantial loss. Sixthly, the intended appeal which has high chances of success will be rendered nugatory if the orders sought are not made. Finally, the Appellant in this case will not suffer any prejudice as no irreversible action will be taken affecting the suit land during the pendency of the appeal.
 3. The motion is opposed by the Appellant who has sworn a replying affidavit dated 17-3-2025 in which he replies as follows. Firstly, the orders issued are incapable of being stayed as they are negative orders. Secondly, the only orders capable of execution are those on costs but the court ordered that each party bears its own. Thirdly, the intended appeal, being a second appeal, can only be on points of law and not fact. Finally, the Respondent has not demonstrated that she has an arguable appeal. For the above and other reasons, the Appellant prays for the dismissal of the motion.
 4. Counsel for the parties were to file written submissions by 23/4/25. I have not seen any submissions from either counsel.
 5. I have carefully considered the motion in its entirety including the grounds, the supporting affidavit and the replying affidavit. It is not disputed that the Appellant is in occupation of the suit land and he is also the registered owner. The worst that can happen to the Respondent is to have the suit land alienated during the pendency of the appeal to the Court of Appeal. I believe that the motion seeks to stay the transfer of the suit and. It does not seek to evict the Appellant from the suit land or to register the land in the Respondent's name.
 6. Under Order 42 rule 6(2) Civil Procedure Rules, no order of stay of execution shall be made unless the court is satisfied that substantial loss may result to the Applicant unless the order is made, the application has been made without unreasonable delay and such security as the court orders for the due performance of such decree as may ultimately be binding on the Applicant has been given by him.
 7. Applying the test in Order 42 rule 6(2) Civil Procedure Rules to this case, if the order for non alienation of the suit land is not made, the Appellant could alienate it. If that were to happen, the pending appeal would be rendered nugatory in the event that it succeeds. There would be no suit land for the Respondent at the end of the litigation. The Appellant has nothing to lose if the order to inhibit any dealing with the suit land is made. He will remain in occupation and continue being the registered owner of the suit land.
 8. The judgment being appealed against is dated 29-1-25 while this motion is dated 21-2-2025. The period of 23 days taken to file the motion is not long. There is therefore no unreasonable delay.
 9. Is there any need to order the Respondent to give any security for the due performance of such decree or order as may ultimately be binding upon him? I find no need because as it is now, the Respondent



has neither the possession nor the registration of the suit land to his name. Instead, it is the Appellant who has both the possession and the registration. It would not be therefore necessary to burden the Respondent with any order of security.

10. For the above stated reasons, I allow the notice of motion dated 21-2-25 but in a limited manner in the following terms.
 - a. An order of inhibition to issue prohibiting any sale, transfer or charging of the suit land pending the hearing and determination of the Court of Appeal.
 - b. Costs of this application to await the outcome of the appeal in the Court of Appeal.

It is so ordered.

DATED, SIGNED AND DELIVERED VIRTUALLY AT MURANG'A THIS 19TH MAY, 2025.

M. N. GICHERU

JUDGE

Delivered online in the presence of:-

Court Assistant – Mwangi Njonjo

Appellant – Mr. Ruiru

Respondent – Mr Ndung'u

