



**Rukwaro v Jumbe (Civil Appeal (Application) E194 of 2023)  
[2025] KECA 1501 (KLR) (19 September 2025) (Ruling)**

Neutral citation: [2025] KECA 1501 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E194 OF 2023  
W KARANJA, LK KIMARU & AO MUCHELULE, JJA  
SEPTEMBER 19, 2025**

**BETWEEN**

**JOSEPH GITONGA RUKWARO ..... APPLICANT**

**AND**

**IJILAL YUSUF JUMBE ..... RESPONDENT**

*(Being an appeal from the judgment of the Environment and Land Court at Nyeri (J.O. Olao, J.) dated 6th July 2023 in ELC Appeal No. E002 of 2020)*

**RULING**

1. Vide a notice of motion dated 27<sup>th</sup> November 2023, brought under, inter alia, Rule 5(2)(b) of the Court of Appeal Rules, the applicant sought an order as follows:-

“The Honourable Court be pleased to order stay of execution of judgment/decreed delivered on 6<sup>th</sup> July 2023 all consequence (sic) orders arising and further proceedings in Environment and Land Court ELC Appeal No. E002 of 2020 and/or hearing of the notice of motion dated 23<sup>rd</sup> October 2023 filed therein pending interpartes hearing and disposal of the application and/or the hearing and final determination of Court of Appeal C 194 of 2023.”

The applicant also prayed for costs of the motion.

2. The application is predicated on the grounds on its face which state, inter alia, that the applicant was aggrieved by the judgment of the Environment and Land Court (ELC) delivered on 6<sup>th</sup> July 2023 and had preferred an appeal against the same; that following the said judgment, the applicant’s title to Land Parcel No. Aguthi/Gatitu/1 stood the risk of being revoked; that he has a good appeal, which would be rendered nugatory if the orders sought are not granted. He urged the Court to allow the application.



3. In his affidavit in support of the motion sworn on 27<sup>th</sup> November 2023, the applicant reiterates the grounds on the face of the application. He deposes, inter alia, that the respondent had also filed an application for review of the judgment, which if heard would result in the revocation of his Title Deed.
4. We observe, however, that the prayer for stay of execution of the judgment encompasses staying all orders arising from the said judgment and the prayer for stay of the stated application was not necessary. We also note that the prayer was also not properly placed before the Court, as it was lumped together with the prayer for stay of execution of the judgment. It ought to be a separate prayer.
5. The application is opposed through the replying affidavit sworn by the respondent on 27<sup>th</sup> March 2024. The respondent deposed that the applicant's suit sought eviction orders against the respondent and his family. That the respondent and his family have lived on the suit land for over 50 years, and the orders given by the court were to stop eviction; and that the court had not granted him orders for eviction. He emphasised that his appeal was allowed by the said judgment and the orders given were of dismissal of the applicant's suit and there was, therefore, nothing to be stayed, as the orders sought to be stayed were negative orders. He urges the Court to dismiss the application.
6. There were no submissions filed by either party. In his brief oral submissions in Court during the plenary hearing, learned counsel Mr. Wabandi Gacheru told the Court that their appeal has raised 7 grounds which, in his view, deal with points of law and which deserve to be ventilated before this Court. Among the issues raised in the appeal, is that the impugned judgment has set aside judgments of other courts of concurrent jurisdiction which had determined the issue of ownership of the suit land.
7. On the nugatory aspect, the applicant avers that unless the execution of the said judgment is stayed, the appeal will be rendered nugatory as his Title Deed will have been revoked.
8. On the other hand, Mr. Ombongi, learned counsel for the respondent maintained that the application does not meet the threshold set for applications of that nature to succeed. He stated that the applicant sought to stay negative orders, which was not possible.
9. We have carefully considered the application and the oral submissions by learned counsel. There is a notice of appeal duly filed, which gives us jurisdiction to entertain this application. (See *Safaricom Ltd -vs- Ocean View Beach Hotel Ltd & 2 Others* [2010] eKLR). To entitle the applicant to the order of stay of execution that sought, the applicant is obliged to satisfy us that his intended appeal is arguable and that if we do not grant stay of execution and the appeal succeeds, it will be rendered nugatory. (See *Jaribu Holdings Ltd -vs- Kenya Commercial Bank Ltd*. Civil Appeal No. 314 of 2007). To say that an appeal is arguable is another way of saying that it is not frivolous and that it raises a bona fide issue deserving full consideration by the Court. Even one bona fide issue will satisfy the requirement, for the law does not look for a multiplicity of arguable issues. (See *Kenya Tea Growers Association & Another -vs- Kenya Planters & Agricultural Workers Union*, Civil Appeal No. Nai. 72 of 2001).
10. On the question of arguability, we have looked at the 7 grounds of appeal in the Memorandum of Appeal and we think that the intended appeal is not frivolous. It will be necessary for the Court to be addressed on the question whether the High Court rendered a decision that overruled decisions of other court of contemporary jurisdiction. We need to state at this point that the application is not against negative orders as the impugned decision allowed the respondents appeal. We are satisfied that the intended appeal is arguable.
11. On the nugatory aspect, the applicant is worried that the appeal will be rendered nugatory if the said judgment is not stayed. Our view of the matter, however, is that there was no order for revocation of his Title Deed. Secondly, even if the Title Deed is revoked and the appeal succeeds, the same can be restored. The principle on nugatory aspect has not been proved.



12. The law requires that the applicant demonstrates both principles and proving only one of them does not assist the applicant as the principles are conjunctive and not disjunctive. Having found that the applicant has failed to demonstrate that his appeal will be rendered nugatory absent stay, we find the application does not pass muster.

13. Accordingly, the application is dismissed with costs to the respondent.

**DATED AND DELIVERED AT NYERI THIS 19<sup>TH</sup> DAY OF SEPTEMBER, 2025**

**W. KARANJA**

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**JUDGE OF APPEAL**

**L. KIMARU**

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**JUDGE OF APPEAL**

**A.O. MUCHELULE**

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**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

