



**Barasa v Nambili (Suing as the Legal Representative of the Estate of Nambili Wekhomba)
((Suing as the Legal Representative of the Estate of Nambili Wekhomba)) (Environment
and Land Appeal E006 of 2025) [2025] KEELC 4547 (KLR) (12 June 2025) (Ruling)**

Neutral citation: [2025] KEELC 4547 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT BUNGOMA
ENVIRONMENT AND LAND APPEAL E006 OF 2025
EC CHERONO, J
JUNE 12, 2025**

BETWEEN

EMILY NEKESA BARASA APPELLANT

AND

EZEKIEL WEKHOMBA NAMBILO RESPONDENT

**(SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF NAMBILO
WEKHOMBA)**

RULING

1. The Appellant/Applicant herein filed a Notice of Motion under certificate of urgency dated 11th day of March 2025 seeking the following orders;
 - a. (Spent)
 - b. Pending hearing and determination of this application inter parties, this Honourable Court be pleased to issue temporary stay of execution of the judgment delivered in BGM CMCC No. 143 of 2016 on 27th February of 2025.
 - c. This Honourable Court be pleased to issue stay of execution of the judgment delivered in BGM. CMCC. No. 143 of 2016 on 27th February 2025 pending the hearing and determination of the appeal herein.
 - d. The status quo obtaining on the ground be maintained pending the hearing and determination of the appeal herein.
 - e. Costs of this application be provided.



2. The application is premised on grounds apparent on the face of the said application, the supporting affidavit as well as a further affidavit sworn by the Applicant on 11th February 2025 and 27th March 2025 respectively. The application is opposed by the Respondent vide a Replying affidavit sworn on 24th April 2025.
3. The gist of the application is that Judgment was entered in favour of the Respondent against the Appellant in a former suit being Bungoma CM-ELC 143 of 2016. In his claim, the Respondent had averred that he was the absolute registered owner of the suit land and that the Appellant's entry and occupation was without his authorization. He sought to have the Appellant and his family evicted therefrom. On his part, the Respondent averred that she purchased a portion of the suit land from one Wilfred Tindi Makokha vide a sale agreement dated 18/08/20 who had bought the same from the Respondent and that she took possession of the land in 2016. She produced a Sale agreement dated 04/02/2015 as D-Exhibit No. 1
4. In his analysis, the trial magistrate observed as follows;
 - After a perusal of pleadings and submissions and upon assessment of the evidence, the following facts are common ground;
 - i. Title No. Kimilili/Kimilili/211 (the suit property) is registered in the name of Nambili Wekhomba (deceased);
 - ii. The defendant did not purchase any portion of the suit property from the legal representatives of the estate of the Nambili Wekhomba (deceased)
 - iii. The Defendant purportedly purchased the suit from one Wilfred Makokha.
5. The Appellant was aggrieved with the decision of the trial court and preferred this appeal vide a Memorandum of appeal dated 07/03/2025 and later the present application for stay of the impugned judgment/order pending hearing of the appeal. The applicable law for stay pending appeal is order 42 Rule 6 of the CPA and the Rules made thereunder which sets out three prerequisites for the grant of stay pending appeal as follows;
 - a. The Applicant must demonstrate that he will suffer substantial loss unless the order is granted.
 - b. The application has been brought timeously and
 - c. The applicant has given security as the Honourable Court may require for the due performance of the decree as may ultimately be binding on him.
6. In addition, and this being an appellate court, the Applicant is also required to demonstrate that he has an arguable appeal which would be rendered nugatory unless the orders sought are granted.
7. From the affidavit evidence, it is clear that the Appellant who is currently in possession of the suit land together with his family is likely to suffer substantial loss unless the stay order is granted. It is also apparent that the impugned judgment was delivered on 27th February 2025 while the present application was filed on 11th March 2025 which was less than 2 weeks. I find that the application was filed without undue delay. As to whether this appeal would be rendered nugatory unless the stay of execution order is granted, the Appellant averred that he bought the suit land from one Wilfred Tindi Makokha who had bought it from the Respondent herein. I find this an arguable ground that require the substratum of the appeal to be preserved pending hearing and determination of the appeal on merits. It is also trite that when determining an interlocutory application for stay such as the one before



me, the court must not make definitive conclusion on facts which may come up on final appeal before it.

8. The upshot of my finding is that the Notice of Motion application dated 11th March 2025 is merited and the same is hereby allowed as follows;
 1. The Appellant to compile, file and serve the record of appeal within 30 days from the date of this Ruling failing which the stay order shall be vacated.
 2. The Costs of the application shall abide the main appeal.

READ, DELIVERED AND SIGNED AT BUNGOMA THIS 12TH DAY OF JUNE, 2025

HON. E.C CHERONO

ELC JUDGE

In the presence of;

1. Applicant/Advocate-absent.
2. Respondent/Advocate-absent.
3. Bett C/A.

