



**Ngala & 3 others v Kanyi & another (Environment and Land Appeal E001 of 2025) [2025] KEELC 6162 (KLR) (24 September 2025) (Ruling)**

Neutral citation: [2025] KEELC 6162 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MOMBASA  
ENVIRONMENT AND LAND APPEAL E001 OF 2025  
SM KIBUNJA, J  
SEPTEMBER 24, 2025**

**BETWEEN**

**RONALD NGALA ..... 1<sup>ST</sup> APPELLANT  
JANE BEATRICE WANJIRA MUIRI ..... 2<sup>ND</sup> APPELLANT  
ELIZABETH MGWATA NAZARETH ..... 3<sup>RD</sup> APPELLANT  
KATHERINE GETAO ..... 4<sup>TH</sup> APPELLANT**

**AND**

**DAVID MURIETHI KANYI ..... 1<sup>ST</sup> RESPONDENT  
CONSOLIDATED BANK OF KENYA LIMITED ..... 2<sup>ND</sup> RESPONDENT**

***(NOTICE OF MOTION DATED 5<sup>TH</sup> FEBRUARY 2025)***

**RULING**

1. The appellants moved the court through the notice of motion dated 5<sup>th</sup> February 2025 seeking for the following prayers:
  1. Spent.
  2. That this Honourable Court be pleased to issue a temporary order of stay of proceedings in MC ELC case number E181 of 2023, (Ronald Ngala & 3 others versus David Mureithi Kanyi & Consolidated Bank Ltd) before honourable J.B Kalo pending the hearing and determination of this application.
  3. That pending the hearing and determination of this application, there be and is hereby issued and order of status quo on all that property known as subdivision number 914/IV/MN.



4. That this Honourable court be pleased to issue a temporary order of stay of proceedings in MC ELC case number E181 of 2023, (Ronald Ngala & 3 others versus David Mureithi Kanyi & Consolidated Bank Ltd) before honourable J.B Kalo pending the hearing and determination of this appeal.
  5. That pending the hearing and determination of this appeal, there be and is hereby issued and order of status quo on all that property known as subdivision number 914/IV/MN.
  6. That the costs of this application be borne by the respondents jointly and severally.
2. The said application is based on the eleven (11) grounds on its face, and supported by the affidavit of Ronald Ngala, 1<sup>st</sup> appellant, sworn on 5<sup>th</sup> February 2025, inter alia deposing that they purchased maisonettes on plot 914/IV/MN, the suit property, in the estate known as Mtwapa Creek Estate, from the 1<sup>st</sup> respondent under their respective sale agreements between 2015 to 2018; that the agreements were more or less similar and under clause 4.0, the 1<sup>st</sup> respondent had an obligation to register the transfer of the suit property to their respective names through the grant of subleases of 99 years, but failed to do so, notwithstanding the fact that they had taken possession; that when they discovered that the suit property had been advertised in the Daily Nation of 18<sup>th</sup> March 2024 for sale on 4<sup>th</sup> April 2024, on instructions from the 2<sup>nd</sup> respondent, they filed a suit in the lower court and applied to stop the sale; that their application was dismissed through the ruling of 4<sup>th</sup> December 2024, and they filed an appeal, that raises serious arguable issues of law and fact and has high chances of success; that they have since discovered through the surveyors reports that their houses are located on a plot with a different reference number to the suit property, and accused the 1<sup>st</sup> respondent for misrepresentation; that they conducted a search and discovered that the 1<sup>st</sup> respondent had secured a loan of Kshs.11,000,000 vide a charge against the suit property from the 2<sup>nd</sup> respondent that was registered on 26<sup>th</sup> April 2022; that by the time of charging the suit property, the 1<sup>st</sup> respondent had handed over legal possession of the said land to the appellants, thereby creating a constructive trust that defeats the 2<sup>nd</sup> respondent's interest; that they filed the instant application without delay, and prays for it to be allowed.
3. The 2<sup>nd</sup> respondent opposed the application through the replying affidavit of John Irungu, Nkrumah branch manager, sworn on 24<sup>th</sup> February 2025, in which he inter alia deposed that on 6<sup>th</sup> August 2022 the 1<sup>st</sup> defendant made an application for a temporary overdraft facility, which was approved on 16<sup>th</sup> August 2022; that the 1<sup>st</sup> respondent's application was one-off facility expected to be paid in full on expiry of 90 days from the date of availability, and was secured by existing securities held by the bank on account of previous facilities; that the security in respect of the overdraft facility was perfected through a charge that was registered on 26<sup>th</sup> April 2022 for Kshs.11,000,000; that the 2<sup>nd</sup> respondent had conducted due diligence and confirmed legal ownership of the property before registration of the charge; that the appellants have based their application on sale agreements that the 2<sup>nd</sup> respondent is not privy to, and which have not been attached to the supporting affidavit; that a charge is an overriding interest within the meaning of section 28 (g) of the Land Registration Act; that the appellants' claim on the suit property is an afterthought as the subject sale agreements refer to plots MN/IV/ 919, 922 and 935 and not MN/IV/ 914; that the appellants have not indicated when they commenced occupation and did not produce certificates of completion or occupation and consequently their consent before charging the suit property was not necessary; that the misrepresentation cited by the appellants is evidence that they did not conduct due diligence; that the survey report does not disclose the appellants interest over the suit property; that the appellant's have not demonstrated a prima facie case; that the 2<sup>nd</sup> respondent will suffer prejudice if the application is granted as its right under the security instrument will be fettered, while it has greater rights as a secured creditor.



4. The appellants filed a supplementary affidavit sworn by the 1<sup>st</sup> appellant on 4<sup>th</sup> April 2025 inter alia deposing that he bought maisonette 3 on an off plan basis erected on the suit property; that all the plots listed as securities are plots which form part of Mtwapa Creek Estate; that the mistake in their various sale agreements have been overridden by the conduct of the 1<sup>st</sup> respondent handing over to them the various units and their acceptance of the same; that none of the parties have moved to repudiate the said sale agreements, and completion is thus ongoing; that the 2nd respondent conducted scrupulous due diligence otherwise it would have known that the properties have been occupied; that by failing to inquire into the appellants' presence on the suit property, the 2nd respondent unjustly enriched the 1st respondent by advancing money to him based on unlawful charge; that the 2nd respondent can recover its monies by way of money claim against the 1<sup>st</sup> respondent; that if the orders sought are not granted the respondents will alienate the suit property, and the appellants and their families will be rendered destitutes and homeless.
5. The court heard counsel for the parties on 18<sup>th</sup> February 2025, 8<sup>th</sup> April 2025 and 7<sup>th</sup> July 2025, and among others directed that written submissions be filed and exchanged within the timelines given. The learned counsel for the Appellants and the 2nd respondent subsequently filed their submissions dated 4<sup>th</sup> May 2025 and 4<sup>th</sup> July 2025 respectively, which the court has considered.
6. The issues for determinations by the court are as follows:
  - a. Whether the appellants have met the threshold for temporary order of injunction and stay of proceedings to issue at this interlocutory stage.
  - b. Who bears the costs of the suit?
7. The court has carefully considered the grounds on the application, affidavit evidence, submissions by the learned counsel and come to the following findings:
  - a. The superior courts have extensively discussed the principles to be taken into consideration in applications for temporary injunctions and stay of proceedings. In the case of *Giella versus Casman Brown (1973) EA 358*, the court opined that for an applicant for temporary injunction order to succeed, he must establish a prima facie case with a likelihood of success, show that irreparable injury that cannot be adequately compensated by an award of damages will occur if the order sought is not granted and that the balance of convenience tilts towards issuing the order.
  - b. In the case of *Global Tours and Travel Ltd versus Five Continents Travel Ltd (2015) eKLR* the court stated as follows about applications for stay of proceedings:

“---- whether or not to grant a stay of proceedings or further proceedings on a decree or order appealed from is a matter of Judicial discretion to be exercised in the interest of justice. Such discretion is unlimited save that by virtue of its character as a judicial discretion; it should be exercised rationally and not capriciously or whimsically. The sole question is whether, it is in the interest of justice to order a stay of proceedings, and if it is, on what terms it should be granted. In deciding whether to order a stay, the Court should essentially weigh the pros and cons of granting the order. And in considering those matters, it should bear in mind such factors as the need for the expeditious disposal of the case. The prima facie merits of the Intended Appeal in the sense of not whether it will probably succeed or not but whether it is an arguable one, the scarcity and optimum utilization of judicial time and whether the application has been brought timeously.”



Also in HALSBURY'S LAWS OF ENGLAND, fourth edition, volume 37 page 330, the learned authors state:

“The stay of proceedings is a serious, grave and fundamental interruption in the right that a party has to conduct his litigation towards the trial on the basis of the substantive merits of his case, and therefore the court's general practice is that a stay of proceedings should not be imposed unless the proceedings beyond all reasonable doubt ought not to be allowed to continue.”

As can be seen from the above decision, stay of proceedings requires judicial discretion while balancing the interests of the parties. The ruling by the trial court effectively removed the little protection that the appellants had against their houses being sold, as the 2<sup>nd</sup> respondent is at liberty to proceed to exercise its statutory power of sale, while the trial suit proceeds to hearing and determination.

- c. Though the 2<sup>nd</sup> respondent and the appellants have confirmed the sale agreements between the latter and 1<sup>st</sup> respondent are over different parcels of land other than the suit property, and therefore ordinarily the appellants would be without basis to stop the 2<sup>nd</sup> respondent from exercising its power of sale pursuant to the registered charge against the suit property, the uncontested fact that the 1<sup>st</sup> respondent had placed them into possession of the suit property years before the charge was registered changes the situation. This is especially so because the 1<sup>st</sup> respondent has not filed any reply to rebut the appellants claim that among others he had placed them in possession on the strength of their sale agreements and that he was therefore holding the title to the suit property in trust for them. The truth or otherwise of those claims will best be dealt with during hearing of the pending suit. The pertinent questions that ought to be addressed at this stage are whether the appellants have established a prima facie arguable appeal; whether the appeal will be rendered nugatory if stay of proceedings is not allowed; whether there will be any prejudice to be suffered by either party if the order sought is allowed; whether the application was filed without delay, and what orders will best balance the interests of both the appellants and the 2<sup>nd</sup> respondent.
- d. The appeal before this court disputes only the ruling by the trial court dismissing a prayer for temporary injunction while the trial suit proceeds. This court has only one function, which is to either confirm or reverse the decision of the trial suit. It is instructive to note that since filing of the suit before the trial court on 17th October 2023, the same has not been listed for hearing, and hence the merits of the case have not been determined. Also of importance to note is that the appeal itself will not deal with the merits of the pending suit, and it is imperative that the suit property be preserved awaiting the hearing and determination of the appeal. On the face of it, the appeal is in the court's opinion, arguable.
- e. The counsel for the appellants has submitted that the appellants will suffer irreparable injury and cited the case of Pius Kipchirchir Kogo versus Frank Kimeli Tenai (2018) eKLR which describes irreparable injury as one that cannot be adequately compensated by damages. The injury in this case is that the appellants and their families will be rendered destitutes, if the 2<sup>nd</sup> respondent exercises its power of sale. There is no contest when it comes to balancing the interest of the parties, as it is clear that the appellants will suffer more as the suit is still pending merit hearing before the trial court. If the 2<sup>nd</sup> respondent proceeds in exercising its statutory power of sale over the suit property, then the appeal herein will be rendered an academic exercise. The overriding objectives in section 3 of the *Environment and Land Court Act* allows the court to override the legitimate expectation of the 2<sup>nd</sup> respondent in favour of granting the



reliefs sought by the appellants in order to avoid subversion of justice. The court further notes this application was filed about two months after the impugned ruling and therefore without undue delay. The court is inclined to temper inconvenience or legitimate expectation of the 2nd respondent with justice to the appellants and allow this application.

- f. Though the appellants have successfully prosecuted their application, and even though under section 27 of the *Civil Procedure Act* chapter 21 of Laws of Kenya costs follow the events unless where otherwise directed by the court for good reasons, in this instance, I find justice will be served by an order that costs abide the outcome of the appeal.
8. From the foregoing determinations, I find merit on the notice of motion dated 5<sup>th</sup> February 2025, and order as follows:
- a. That a temporary order of stay of proceedings in MC ELC case No. E181 of 2023, (Ronald Ngala & 3 others versus David Mureithi Kanyi & Consolidated Bank Ltd) before honourable J.B Kalo is issued, pending the hearing and determination of this appeal.
  - b. That an order that the parties do maintain the obtaining status quo on subdivision number MN/ 1V/914, suit property, is issued to remain in force pending the hearing and determination of this appeal.
  - c. That the costs in the application to abide the outcome of the appeal.

It is so ordered.

**DATED, SIGNED AND VIRTUALLY DELIVERED ON THIS 24<sup>TH</sup> DAY OF SEPTEMBER 2025.**

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

In the presence of:

Appellants :M/s Nabwana

Respondents : M/s M'Mbaka for 2<sup>nd</sup> Respondent only.

Shitemi-Court Assistant.

**S. M. KIBUNJA, J.**

**ELC MOMBASA.**

