



REPUBLIC OF KENYA



**Ikiugu & 4 others v M'twerandu & another (Civil Application  
34 of 2021) [2025] KECA 1601 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1601 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPLICATION 34 OF 2021  
W KARANJA, J MOHAMMED & LK KIMARU, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**NATHANIEL KITHINJI IKIUGU ..... 1<sup>ST</sup> APPLICANT  
LABAN NDEGWA NGIGI ..... 2<sup>ND</sup> APPLICANT  
ZIPPORAH NKATHA MBAABU ..... 3<sup>RD</sup> APPLICANT  
ANN WANJUGU KARITHII ..... 4<sup>TH</sup> APPLICANT  
MUKINDIA SAMWEL MWIRIGI ..... 5<sup>TH</sup> APPLICANT**

**AND**

**RUKARIA M'TWERANDU ..... 1<sup>ST</sup> RESPONDENT  
LEORNARD KIMEU MWANTHI ..... 2<sup>ND</sup> RESPONDENT**

*(Being an application for stay of execution pending the hearing and determination of an intended appeal against the judgment of the Environment and Land Court at Meru (Mbugua J.) delivered on 23rd May, 2018, in ELC Appeal No. 92 of 2010)*

**RULING**

1. Before us is a notice of motion dated 14<sup>th</sup> April, 2021. It is brought under Rule 5(2)(b) of the Court of Appeal Rules, and Sections 3A and 3B of the *Appellate Jurisdiction Act*. The applicants seek, inter alia, stay of execution of the judgment and decree of the Meru Environment and Land Court (Mbugua J.), delivered on 23<sup>rd</sup> May, 2018, in ELC Appeal No. 92 of 2010, and any other subsequent orders issued thereto. It was the applicants' case that they purchased their respective parcels of land from the 2<sup>nd</sup> respondent, which parcels were excised from the original parcel of land Ntima/Igoki/3183 (suit property). The transfer process was completed and the applicants got their respective title deeds, took possession and developed their respective parcels of land.



2. That in June 2020, the applicants learnt of the judgment of the superior court in ELC Appeal No. 92 of 2010, wherein the court determined that the 1<sup>st</sup> respondent was the rightful owner of one and a half share of Ntima/Igoki/3183. This was after the 1<sup>st</sup> respondent attempted to execute the said decree. That the applicants immediately instructed their advocates, after which they discovered the existence of previous court cases between the 1<sup>st</sup> and 2<sup>nd</sup> respondents, with respect to the suit property, which had not been brought to their attention.
3. The applicants stated that they moved the superior court vide an application dated 3<sup>rd</sup> August, 2020, seeking to vary and/or set aside the judgment of superior court, and have the matter heard denovo, and in the alternative, an order of the court excluding parcels Ntima/Igoki/9595, 9596, 9597, 9598, 9605, and 9601, belonging to the applicants, from execution by the 1<sup>st</sup> respondent.

The applicants deponed that the superior court dismissed their application vide a ruling dated 17<sup>th</sup> February, 2021. That the applicants intend to appeal this decision. That the 1<sup>st</sup> respondent has already moved the probate court in Meru Succession Cause No. 197 of 1997, vide an application dated 25<sup>th</sup> June, 2020, in a bid to cancel the subdivision that resulted in the parcels of land transferred to the applicants.

4. The applicants urged that they are innocent purchasers for value without notice, and that they ought to have been involved in the proceedings before the superior court. That unless their application for stay execution of the orders of the superior court is allowed, their titles will be cancelled and they will be evicted from their properties, and their appeal will be rendered nugatory.
5. The application was opposed by the 1<sup>st</sup> respondent in his replying affidavit sworn on 8<sup>th</sup> February, 2023. He deponed that he was not party to the sale of the suit property to the applicants, and that he was not privy to the fact that any of them had an interest in the suit property. The 1<sup>st</sup> respondent deponed that he was registered as the owner of the suit property, in common, together with the original owner, M'Twerandu M'Iriungi, from 14<sup>th</sup> March, 1979, until 18<sup>th</sup> June, 2016, when the court (Gikonyo J.) deregistered him without good reason, despite the fact that his appeal (ELC Appeal No. 92 of 2010) was still pending before the superior court.
6. The 1<sup>st</sup> respondent deponed that the sale of the suit property by the 2<sup>nd</sup> respondent to the applicants was illegal, as at the time of the sale, he was still a registered co-owner of the suit property, and therefore the applicants could not have obtained good title from the 2<sup>nd</sup> respondent. He stressed that his legal dispute with the 2<sup>nd</sup> respondent had spanned over a period of approximately 26 years, and that some of his witnesses have since passed on, and that it would be prejudicial to him if the case was to be heard afresh. He invited us to dismiss the application with costs for lack of merit.
7. The application was canvassed by way of written submissions, duly filed by the applicants and the 2<sup>nd</sup> respondent. Mr. Kiruai for the applicants urged us to allow the application so as to preserve the suit property from wastage. He submitted that no prejudice would be suffered by the respondents if the application is allowed as they do not have actual possession of the suit property. He submitted that the applicants have an arguable appeal that will be rendered nugatory, in the event the order sought is not granted. He maintained that in the appeal, the applicants have urged that they are innocent purchasers for value, and that they were not aware of the running court battles between the two respondents when they purchased their respective portions of the suit property. Counsel urged that if the application is not allowed, the applicants will be evicted, rendered destitute, and lose the developments erected on the suit property worth millions.
8. During the plenary hearing of the application, the 1<sup>st</sup> respondent informed the Court that he had sacked his erstwhile counsel and would proceed to make submissions in person. It was his submission



that the applicants' appeal was not arguable, and that he stands to be prejudiced if the case before the superior court is heard *denovo*, as some of his witnesses are deceased, and that he has lost touch with others. He submitted that he was not involved in any way in the sale of the suit property to the applicants, and that he should be allowed to access his portion of the suit property that has been denied to him for almost thirty (30) years. He urged the Court to disallow the application because the applicants had not made a case to be granted the order sought in the application in that they had not established that their intended appeal has high chances of success or they would be prejudiced if the application is not granted.

9. Mr. Mutunga appeared for the 2<sup>nd</sup> respondent. He told the Court that he was not opposed to the application made by the applicants.
10. We have considered the application, the grounds in support thereof, the replying affidavit, the submissions, the authorities cited and the law. The principles for granting an order for stay of execution under Rule 5(2)(b) of this Court's rules are well settled. This Court in the case of *Trust Bank Limited and Another v. Investech Bank Limited and 3 Others* [2000] eKLR delineated the jurisdiction of this Court in such an application as follows:

“The jurisdiction of the Court under Rule 5(2)(b) is original and discretionary and it is trite law that to succeed an applicant has to show firstly that his appeal or intended appeal is arguable, to put another way, it is not frivolous and secondly that unless he is granted a stay the appeal or intended appeal, if successful will be rendered nugatory. These are the guiding principles but these principles must be considered against facts and circumstances of each case...”

11. In the present application, the applicants' journey to this Court is long and winding and raises legal issues with regard to whether they are indeed proper parties to this appeal. The applicants purchased the suit properties from the 2<sup>nd</sup> respondent during the pendency of succession and civil proceedings before the lower court between the 1<sup>st</sup> and 2<sup>nd</sup> respondents. They were not parties to the suit before the Magistrate's court neither were they parties to the appeal that was lodged before the Environment and Land Court (ELC). It was when the ELC rendered its decision in favour of the 1<sup>st</sup> respondent and made orders to the effect that the transfer of properties to the applicants ought to be reversed and the titles they had obtained pursuant to the impugned subdivision ought be canceled that the applicants sought to be enjoined in the ELC appeal. Their application was dismissed thus provoking the intended appeal.
12. The question that this Court has had to grapple with in regard to whether the intended appeal to be lodged by the applicant is arguable is whether they could legally be enjoined in an appeal after the appellate court had delivered its judgment in a situation where they were not parties to the suit in the Magistrate's court and in the appeal itself. That is a novel issue which will be considered by the court that will hear the appeal. We are not prepared to hold that the intended appeal is not arguable noting that an arguable appeal is not one that must necessarily succeed but one which is amenable to being subjected to the full attention of the Court, however tenuous the grounds of appeal may appear to be.
13. As regards whether the appeal would be rendered nugatory if the application is not allowed, we are not persuaded that the applicants established the nugatory aspect to be granted the application under Rule 5(2)(b) of this Court. The reason for this decision is that the applicants' claim is essentially against the 2<sup>nd</sup> respondent and not the 1<sup>st</sup> respondent. They were not parties to the dispute between the 1<sup>st</sup> and 2<sup>nd</sup> respondents. Their claim to be innocent purchasers for value without notice is doubtful in light of the fact that the applicants entered into the agreement for purchase of the suit property during the pendency of the suit both before the Magistrate's court and the Succession court. The



principle enunciated in the case of Dimma Management Ltd v. County Government of Mombasa & 5 others (petition 8(E010) OF 2021[2023] KESC 30 (KLR). where the Supreme Court held that any party wishing to purchase a parcel of land must undertake due diligence to establish the history of the vendor's title and that it is not enough for such a party to claim that it undertook a search at the Land registry as proof of sufficient due diligence, seem to apply in this case. The applicants' claim therefore is essentially against the 2<sup>nd</sup> respondent whom they have locus standi to sue for appropriate remedy.

14. In the premises therefore we hold that the applicants failed to establish the second limb on whether their intended appeal will be rendered nugatory, if the orders craved for in the present application are not granted. The application lacks merit and is hereby dismissed with costs to the 1<sup>st</sup> respondent.

**DATED AND DELIVERED AT NYERI THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

**W. KARANJA**

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**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**L. KIMARU**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

