



REPUBLIC OF KENYA



KENYA LAW
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**Mugo & another v Ngari (Civil Application E083 of 2022)
[2025] KECA 1555 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1555 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NYERI
CIVIL APPLICATION E083 OF 2022
W KARANJA, J MOHAMMED & LK KIMARU, JJA
OCTOBER 3, 2025**

BETWEEN

TERESA WANGECHI MUGO 1ST APPLICANT

ZIPPORAH WANJIRU MUGO 2ND APPLICANT

AND

JOSHUA WAMBUGU D NGARI RESPONDENT

(An application for an order of injunction and stay of execution pending the hearing and determination of an intended appeal from the judgment and decree of the Environment and Land Court at Nyeri (Olola, J.) dated 28th September, 2022, in ELC Appeal No. 26 of 2019)

RULING

1. Being dissatisfied with the judgment of the superior court which determined that the applicants had failed to establish their claim to land parcel number Nyeri/Uasonyiro/145 (suit property) by adverse possession, the applicants lodged a notice of appeal dated 5th October, 2022, indicating their intention to appeal to this Court.
2. The applicants have now moved the Court by a notice of motion dated 26th October, 2022, predicated upon Rule 5(2)(b) of the *Court of Appeal Rules*. The applicants sought, *inter alia*, injunctive orders restraining the respondent from evicting or otherwise interfering with their quiet possession of the suit property, pending the hearing and determination of the appeal. In the alternative, the applicants urged us to stay part of the trial court's decree directing the applicants to deliver vacant possession of the suit property to the respondent, pending the hearing and determination of the appeal.
3. The grounds in support of the application are that the applicants have been living on the suit property for the last thirty-five (35) years, and had extensively developed the said property, and that unless the orders sought are granted, the applicants risk being evicted, and consequently suffering substantial loss and hardship.



4. In their supporting affidavit, the 1st applicant stated that her late husband, Josephat Mugo Murenga(deceased), entered into an agreement for the purchase of the suit property from the respondent, sometime on 13th July, 1987. That pursuant to the sale agreement, they took possession of the suit property and have been residing thereon since then. That the parties were not able to complete the sale as envisaged by the said agreement. They therefore entered into a supplementary agreement dated 27th August, 1987, wherein the completion date was extended to 31st December, 1987. The 1st applicant stated that despite her husband's failure to settle the purchase consideration in full, the respondent procured the consent to transfer the suit property to the deceased from the Land Control Board. That the sale fell through, and in a plaint dated 16th January 2015, the respondent instituted a suit against the applicants before the Chief Magistrate's Court at Nyeri, seeking vacant possession of the suit property.
5. The 1st applicant further stated that unaware of the suit lodged by the respondent, she filed a suit by way of Originating Summons on 4th February, 2015, claiming that she had become entitled to the suit property by way of adverse possession. That the two suits were consolidated and the trial court found in favour of the respondent. That the ELC affirmed the trial court's decision. The 1st applicant urged that her appeal before this Court is arguable and has a high chance of success. She reiterated that she has been in possession of the suit property for a period of over 35 years, and had extensively developed the same. She even buried her late husband on the said property. She urged that if the orders sought are not granted, their appeal, if successful, will be rendered nugatory.
6. In response to the application, the respondent filed a replying affidavit sworn on 7th November, 2022. It was his assertion that the applicants' appeal has no chances of success as it is founded on the question of computation of time which is an issue of fact. He urged that the applicants' application was geared towards denying him enjoyment of the fruits of his judgment. He contended that the applicants, as was determined by the two courts below, occupied the suit property with his consent. The respondent invited us to dismiss the application with costs for lack of merit.
7. The application was canvassed by way of written submissions and oral submissions made by Mr. Nderi Kiingati learned counsel for the applicant and Mr. Muchiri wa Gathoni learned counsel for the respondent. In their submissions, the applicants reiterated the facts of the case as outlined in the supporting and replying affidavits. The applicants urged that their appeal is arguable as the learned Judge erred in computing the statutory period with respect to whether adverse possession had accrued. It was their submission that time started running after the expiry of six months from the date when the sale agreement was entered into, that is, 13th July, 1987. The applicants explained that the suit property is the only home they have known, and that if the orders sought are not granted, their appeal, if successful will be rendered nugatory.
8. The respondent, while reiterating the averments made in his replying affidavit, was of the view that the applicants had not established that their appeal is arguable, and would be rendered nugatory, if their application is disallowed.
9. We have considered the application, the rival submissions and the law. For this Court to grant any order under Rule 5(2)(b) of this *Court's Rules*, an applicant has to show, first that his intended appeal is arguable, and secondly, that unless he is granted the orders sought, the intended appeal, if successful, will be rendered nugatory. An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court, and one which is not frivolous. A single bona fide arguable ground of appeal is sufficient to satisfy this prerequisite. See *Stanley Kangethe Kinyanjui v. Tony Ketter & 5 others* [2013] eKLR.



10. In the present application, the applicants have submitted that they have an arguable appeal in the sense that they were aggrieved by the decision of the trial court which failed to properly calculate the period when their claim to adverse possession started running. The applicants further submitted that they had been in possession of the suit parcel of land for a period of more than 30 years having entered the suit parcel of land pursuant to a land sale agreement that was entered between the 1st applicant's husband one Josephat Mugo Murenga (deceased) in 1987.
11. The respondent opposed the application on the grounds that the applicants cannot rely on their possession in the face of the respondent's claim which was upheld by the trial court that the 1st applicant's husband failed to pay the purchase consideration in full and therefore they are not entitled to the suit parcel of land either by virtue of the sale agreement or adverse possession.
12. Our re-evaluation of the facts of this application leads us to the conclusion that indeed the applicants made a case on arguability of their appeal. It is arguable whether the trial court properly evaluated the evidence in regard to whether the applicants were entitled to orders of adverse possession noting that the calculation of when the applicants became adverse possessors of the suit parcel of land is in dispute. Further, this Court noted that the Land Control Board had granted its consent to the land sale agreement and, therefore, substantially the agreement for sale may be said to have been performed subject to the payment of the balance of the purchase consideration. These issues are not idle and are arguable. As this Court has previously held, an arguable appeal is not one which must succeed but one which is subject to full consideration by the Court. The applicants have, therefore, established the first limb on arguability of their appeal.
13. As regards whether the intended appeal will be rendered nugatory, the applicants urged the Court to take into consideration that they had been in possession of the suit parcel of land for a period of more than 35 years and extensively developed the same and, in the circumstances, the intended appeal will be rendered nugatory if the respondent is allowed to evict them from the suit parcel of land. The respondent was not persuaded that the applicants had established the nugatory aspect of their appeal. He asserted that the applicants were in occupation of the suit parcel of land with his permission and therefore having withdrawn his consent, they had no right to reside on the suit parcel of land.
14. We agree with the applicants that indeed the intended appeal would be rendered nugatory if the respondent is allowed to execute the judgment. The applicants are in possession of the suit parcel of land. They have been in possession for a period of more than 35 years. They have undertaken considerable developments thereon.

If they are evicted from the suit parcel of land, the intended appeal will be rendered nugatory.
15. In the circumstances therefore, we hold that the applicants established the two limbs envisaged under Rule 5(2)(b) of the *Court of Appeal Rules*. The applicants are therefore granted orders of injunction restraining the respondent from evicting them from the suit parcel of land pending the hearing and determination of the intended appeal. The costs shall abide the outcome of the main appeal.

DATED AND DELIVERED AT NYERI THIS 3RD DAY OF OCTOBER, 2025.

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W. KARANJA

JUDGE OF APPEAL

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JAMILA MOHAMMED



JUDGE OF APPEAL

.....

L. KIMARU

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR.

