



**Namu & 2 others v Joseph & 3 others (Civil Appeal (Application)  
E013 of 2024) [2025] KECA 1560 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KECA 1560 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NYERI  
CIVIL APPEAL (APPLICATION) E013 OF 2024  
S OLE KANTAI, JW LESSIT & AO MUCHELULE, JJA  
OCTOBER 3, 2025**

**BETWEEN**

**MARITINO NJIRU NAMU ..... 1<sup>ST</sup> APPLICANT  
DANIEL IRERI NAMU ..... 2<sup>ND</sup> APPLICANT  
ANDREW IRERI NJERU ..... 3<sup>RD</sup> APPLICANT**

**AND**

**GABRIEL NJUE JOSEPH ..... 1<sup>ST</sup> RESPONDENT  
HAZRON NJIRU NAHASHON ..... 2<sup>ND</sup> RESPONDENT  
PIUS KARIUKI NJUE ..... 3<sup>RD</sup> RESPONDENT  
LAWRENCE FM KAMUGANE ..... 4<sup>TH</sup> RESPONDENT**

*(An application for an order of injunction and stay of proceedings in Embu  
ELC No. E012 of 2013 against the ruling and order of the ELC at Embu (A.K.  
Kaniaru, J.) dated 8th November 2023. in Succession Cause No. 472 of 2004)*

**RULING**

1. In a notice of motion dated 29<sup>th</sup> May 2024, the applicants Maritino Njiru Namu, Daniel Ileri Namu and Andrew Ileri Njeru applied to this Court to grant an injunction –

“to arrest/remand the ELC Case No. E012 of 2023” until Civil Appeals Nos. E013 of 2024 and E080 of 2024 have been heard and determined. Secondly, that the ELC Judge, Justice A.K. Kaniaru, should not continue with the mention or hearing of the ELC Case No. E012 of 2024 until the two appeals have been heard and determined. The application was against the respondents Gabriel Njue Joseph, Hazron Njiru Nahashon, Pius Kariuki Njue and Lawrence F.M. Kamugane. The Court’s jurisdiction was stated to be grounded on Rule



47(1)(2) of “the *Appellate Jurisdiction Act* as read together with rule 13 section 7(a) of the ELC Act Cap. 12A and Order 42 Rule 24 of the *Civil Procedure Act*”

2. We shall, however, consider this to be an application for injunction under Rule 5(2)(b) of the Court of Appeal Rules, 2022 which provides as follows:-

“ Subject to sub-rule (1), the institution of an appeal shall not operate to suspend any sentence or to stay execution, but the Court may—

(b) in any civil proceedings, where a notice of appeal has been lodged in accordance with rule 75, order a stay of execution, an injunction or a stay of any further proceedings on such terms as the Court may think just.”

3. A preliminary issue is that the 2<sup>nd</sup> respondent, Hazron Njiru Nahashon, admittedly passed on before the appeal subject of the application was filed by the applicants. At the request of the applicants, the application against him was withdrawn with no orders as to costs.
4. The parties’ dispute is over land parcels Evurore/Nguthi/2705 and Evurore/Nguthi/2706 which were originally Evurore/Nguthi/2240. In Embu ELC Petition No. 1 of 2023, the applicants claimed that their late father, Namu Ndumo, was the owner of the Evurore/Nguthi/2240 having acquired it in objection No. 103 of 1973 - 1974. However, the 2<sup>nd</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents had sold the resultant parcels, Evurore/Nguthi 2705 and 2706, to the 1<sup>st</sup> respondent while knowing that they, the applicants, resided on the parcels, had extensively developed them and had buried their relatives thereon. The 1<sup>st</sup> respondent was seeking that they vacate the parcels. The petition sought a declaration that the lands belonged to their late father and an order cancelling the 1<sup>st</sup> respondent’s name in the register as owner and, lastly, that the parcels be ordered back to their late father.
5. The 1<sup>st</sup>, 3<sup>rd</sup> and 4<sup>th</sup> respondents opposed the petition by filing a preliminary objection in which they contended that the suit was res-judicata in view of the claim and decision in Embu ELC No. 55 of 2016 (OS).
6. Embu ELC No. 55 of 2016 (OS) was before the Magistrate’s Court at Embu. In it, the 1<sup>st</sup> and 2<sup>nd</sup> applicants sued the 2<sup>nd</sup> and 3<sup>rd</sup> respondents claiming that they (the applicants) had become entitled to land parcels Evurore/Nguthi/2705 (owned by the 3<sup>rd</sup> respondent) and Evurore/Nguthi/2706 (owned by the 2<sup>nd</sup> respondent) by adverse possession, the claim by the respondents have been extinguished. The applicants sought to be registered as the joint owners of the two parcels. The Magistrate’s Court heard the summons, which the respondents had opposed. In a judgment delivered on 19<sup>th</sup> October 2022 the court found that the claim for adverse possession had not been proved. The suit was dismissed.
7. The preliminary objection was heard by learned A.K. Kaniaru, J. who on 8<sup>th</sup> November 2023 delivered a ruling allowing it and dismissed the petition. In paragraph 17 of the Ruling, this is what the court observed:-

“ 17) What the petitioners have done here is to change their approach. Their matter is now brought as a constitutional petition and a few parties are added to give it a cosmetic facelift. But it is clear that they are claiming ownership of the same parcels of land. To the extent that the petitioners are trying to have a second bite at the cherry, I find the matter before me to be an abuse of the process of the court. It is unfair to allow the respondents to be subjected to litigation twice over the same subject matter and regarding the same issue of ownership. In Benjoh Amalgamated Ltd -vs- KCB, Petition No.352 of 2007 Emukule, J. (As



he then was) observed that a petition can be struck out or dismissed for being res judicata, or where it is barred by statute, or if it is scandalous, frivolous or vexatious. To me the petition before this court should suffer this kind of fate. In addition to being res judicata, I also find it frivolous and vexatious having regard to the circumstances.”

8. The applicants were aggrieved by the decision and filed a notice of appeal dated 10<sup>th</sup> November 2023. It was followed by Appeal No. E013 of 2024.
9. In Embu ELC No. 012 of 2023, the 1<sup>st</sup> respondent filed a suit seeking the eviction of the 1<sup>st</sup> and 2<sup>nd</sup> applicants from the suit parcels. The plaint was dated 21<sup>st</sup> November 2023. In the instant application, the applicants seek the stay of the hearing of the suit until the appeal herein has been heard and determined. At the time of the filing of this application, the suit was going to be mentioned on 18<sup>th</sup> June 2024. It was sought that the mention be arrested. Quite unfortunately, that request was overtaken by events.
10. It was not clear to us what the Civil Appeal No. E080 of 2024 was in respect of.
11. The instant appeal and application followed the applicant’s dissatisfaction with the decision of the ELC contained in the ruling by the learned A.K. Kaniaru, J. delivered on 8<sup>th</sup> November 2023. The jurisdiction of this Court to hear an application under Rule 5(2)(b) of the Rules springs from a notice of appeal that has been filed indicating an intention to challenge the ruling or judgment that has aggrieved the applicant. We reiterate what RSC Omollo, JA stated in *Safaricom Limited v Ocean View Beach Hotel Limited & 2 Others* [2010]eKLR as follows:-

“It is clear from all the provisions of rule 5 that their basic aim is to provide an interim relief where the superior court has determined a matter and the party against whom the determination is made has either appealed or intends to appeal. If there is no appeal or no intention to appeal, this court would have no jurisdiction to meddle in a decision made by the superior court ”
12. We have not been shown any decision in Embu ELC E012 of 2023 that has aggrieved the applicants, and from which either a notice of appeal or an appeal has been lodged before this Court. That being the case, we cannot, as it were, meddle in the dispute by staying its hearing or otherwise. We have no jurisdiction to do that. The notice of appeal and appeal were directed at the ruling dated 8<sup>th</sup> November 2023 in Embu ELC Petition No. 1 of 2023.
13. The result is that, for want of jurisdiction, we strike out the application dated 29<sup>th</sup> May 2024 with costs to the 1<sup>st</sup> 3<sup>rd</sup> and 4<sup>th</sup> respondents.

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

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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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**

