



David Nganga Njuguna (Suing as Legal Representative of the Estate of the Late Peter Njuguna Ngugi) v Menengai Hill Farmers & Marketing Cooperative Society Limited (Formerly Menengai Hill Farmers’ Co-operative Society Limited) & 2 others (Environment and Land Appeal E034 of 2025) [2025] KEELC 6951 (KLR) (15 October 2025) (Ruling)

Neutral citation: [2025] KEELC 6951 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAKURU
ENVIRONMENT AND LAND APPEAL E034 OF 2025**

**MAO ODENY, J
OCTOBER 15, 2025**

BETWEEN

**DAVID NGANGA NJUGUNA APPLICANT
SUING AS LEGAL REPRESENTATIVE OF THE ESTATE OF THE LATE PETER
NJUGUNA NGUGI**

AND

**MENENGAH HILL FARMERS & MARKETING COOPERATIVE SOCIETY
LIMITED (FORMERLY MENENGAH HILL FARMERS’ CO-OPERATIVE
SOCIETY LIMITED) 1ST RESPONDENT
PAUL CHINA 2ND RESPONDENT
THE LAND REGISTRAR, NAKURU 3RD RESPONDENT**

RULING

1. This ruling is in respect of the Appellant/Applicant’s Notice of Motion dated 12th June, 2025, seeking the following orders:
 - a. Spent
 - b. Spent
 - c. That pending the hearing and determination of the appeal, this Honourable Court be pleased to issue an order of temporary injunction restraining the 1st and 2nd Respondents by themselves, their agents and/or servants from entering, trespassing onto, building structures, selling, alienating, disposing, transferring, leasing or in any manner dealing with land parcel Plot Number 334 (now Dundori Block 10/334).



- d. That in the alternative, pending the hearing and determination of the appeal, this Honourable Court will be pleased to issue a conservatory order preserving the suit land, which is land parcel Plot Number 334 (now Dundori Block 10/334).
 - e. That costs of the appeal be provided for.
2. The application is supported by the annexed affidavit of David Nganga Njuguna, the Appellant/Applicant sworn on 12th June, 2025, where he deponed that the court delivered its ruling on 29th May, 2025, and struck out the suit which he had filed and registered as Nakuru MCELC Case No E078 of 2025 for being sub-judice. He stated that he subsequently filed a Memorandum of Appeal dated 11th June, 2025.
 3. It was his deposition that the grounds in the Memorandum of Appeal raises arguable points and if the orders sought herein are not granted, the appeal would be rendered nugatory. The Applicant also stated that the application has been made without unreasonable delay and the balance of convenience is in his favour as he is in actual possession and occupation of the suit land.
 4. The Respondent, Samuel Waweru, the Secretary of the 1st Defendant, filed a Replying Affidavit sworn on 24th June 2025, and stated that the Appeal does not raise any arguable issues and further that the Applicant has not demonstrated that he will suffer any loss.
 5. According to the Respondent, the benefit that the Applicant has been deriving from the suit property was procured by fraud which should not be countenanced by this honourable court. He further deponed that the applicant has not met the threshold for the grant of the temporary/conservatory orders thus the application should be struck out with costs.

Appellant/Applicant's Submissions

6. Ms. Olili, counsel for the Appellant filed submissions dated 21st July, 2025, and identified the following issues for determination:
 - a. Whether the Applicant has met the principles for the grant of a temporary injunction pending appeal under Order 42 Rule 6 (6) of the Civil Procedure Rules?
 - b. Whether the Applicant is entitled to a conservatory order or status quo order to preserve the suit property pending appeal?
 - c. Whether the Application is an abuse of the court process?
7. Counsel submitted that the appeal is arguable as is evident from the filed Memorandum of Appeal. Reliance was placed on Order 42 Rule 6 (6) of the Civil Procedure Rules, 2010, Section 79 G of the [Civil Procedure Act](#) and the cases of Chater House Investments Ltd vs Simon K. Sang & 3 others [2010] eKLR, Patricia Njeri & 3 others vs National Museum of Kenya [2004] eKLR and Kenya Commercial Bank Limited vs Nicholas Ombija [2009] KECA 228 (KLR).
8. It was counsel's submission that the trial court struck out MCELC Case No E078 of 2025 on 29th May, 2025, citing the sub-judice rule under Section 6 of the [Civil Procedure Act](#), on which the applicant has raised substantial questions of law regarding the interpretation and application of Section 6 of the Civil Procedure Rules. Counsel further submitted that unless restrained, the Respondent's actions of illegally harvesting crops on the suit land and threatening the subsistence of the lessee, Francis Karanja Wahinya, will risk wasting the estate and will render the appeal nugatory.



9. It was Ms. Olili's further submission that the balance of convenience tilts in favor of the Applicant who has lawfully occupied the suit property since 1996 without interruption until the recent acts of interference.
10. Counsel submitted that the Respondents would suffer no prejudice if the land remains preserved but the Applicant stands to suffer irreparable loss if the appeal is rendered nugatory through alienation or eviction. Counsel further urged the court to grant conservatory or status quo orders or alternatively, a temporary injunction pending appeal.
11. Counsel relied on Article 40 of *the Constitution*, Section 6 of the *Civil Procedure Act* and the cases of *Nguruman Ltd vs Jan Bonde Nielsen & 2 others* [2014] eKLR and *Abdullahi & 4 others vs County Government of Mombasa* [2012] eKLR.

1st Respondent's Submissions

12. Ms. Langat, counsel for the 1st Respondent filed submissions dated 7th July 2025, and submitted that the appeal raises no triable issues as the case in the lower court was rightly dismissed for being sub-judice. Counsel submitted that the applicant has not demonstrated any irreparable harm that he stands to suffer if the orders sought herein are not granted.
13. According to counsel, the Appellant has engaged in filing multiple suits relating to the same subject matter and parties which amounts to forum shopping, and therefore issuing status quo orders, would interfere with and prejudice the proceedings pending before the lower court which is yet to be determined.
14. Counsel submitted that the Respondent stands to suffer greater prejudice should the orders sought be granted, and urged the court to dismiss the application for status quo orders with costs.
15. Counsel relied on the cases of, *Patricia Njeri & 3 others vs National Museum of Kenya* [2004] eKLR, *Waiyaki Way Developers Limited vs KCB Bank Kenya Ltd (Civil Case E202 of 2024)* [2024] KEHC 14593 (KLR), *Kuria vs Wanjohi (Environment & Land Case 275 of 2022)* [2022] KEELC 15587 (KLR) and *Mary Nthenya Wambua & 5 others vs Muli Ndeti* [2021] eKLR.

Analysis and Determination

16. The issue for determination is whether the Applicant/Appellant is entitled to an order of temporary injunction/conservatory/status quo pending the hearing and determination of this Appeal.
17. The court has discretionary power under Order 42 Rule 6(6) to grant orders of temporary injunction pending the hearing and determination of an appeal on such terms as it deems fit as long as the procedure for filing an appeal from subordinate court has been complied with. It states as follows:

“Notwithstanding anything contained in sub rule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with”
18. The Appellant stated that he will suffer irreparable harm if the order sought for temporary injunction is not granted, as the Respondent is illegally harvesting crops on the suit land and threatening the subsistence of the lease which will render the appeal nugatory.
19. The principles for the grant of a temporary injunction pending appeal are well settled. In the case of *Patricia Njeri & 3 Others vs. National Museum of Kenya* [2004] eKLR, where the court enumerated



the principles applicable in considering an application for grant of orders of temporary injunction pending appeal are as follows:

- a. “An order of injunction pending Appeal is a discretionary which will be exercised against an Applicant whose Appeal is frivolous.
- b. The discretion should be refused where it would inflict great hardship than it would avoid.
- c. The Applicant must show that to refuse the injunction would render the appeal nugatory.
- d. The court should also be guided by the principles in *Giella Vs. Cassman Brown* [1973] EA 358.”

20. Similarly, in the Court of Appeal case of *Charter House Investments Ltd Vs Simon K. Sang & 3 Others* (2010) eKLR, it was held that :

“Injunction is an equitable and discretionary remedy, given when the subject matter of the case before the Court requires protection and maintenance of the status quo. The award of a temporary injunction by Courts of equity has never been regarded as a matter of right even where irreparable injury is likely to result to the Applicant. It is a matter of sound judicial discretion, in the exercise of which the Court balances the convenience of the parties and possible injuries to them and to third parties.”

21. In an application for injunction/status quo, the court while exercising its discretion, must balance the convenience of the parties and apply the lower risk of injury to avoid injustice.

22. The Appellant stated that he is in possession of the suit land, even though this is a preliminary stage, where the appeal is yet to be heard, it is imperative to preserve the substratum of the appeal so as not to render it nugatory.

23. In the case of case of *Mbuthia v Jimba Credit Finance Corporation & another* [1988] KECA 116 (KLR) the court held that:

“In an application for interlocutory injunctions, the court is not required to make final findings of contested facts and law and the court should only weigh the relative strength of the party’s cases.”

24. I have considered the application, the submissions by counsel, and find that it would be in the interest of justice to grant an order of status quo to be maintained pending the hearing and determination of this Appeal. The Appellant to file the Record of Appeal and fix the Appeal for hearing within 45 days. Costs of the Application to abide by the outcome of the Appeal.

DATED, SIGNED AND DELIVERED AT NAKURU THIS 15TH DAY OF OCTOBER 2025.

M. A. ODENY

JUDGE

