



**Wamaitha (Suing as the Legal Administrator of the Estate of Esther Wamaitha Mbugua) v Chutha & 2 others (Environment and Land Case 537 of 2008) [2025] KEELC 6896 (KLR) (3 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 6896 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI  
ENVIRONMENT AND LAND CASE 537 OF 2008**

**TW MURIGI, J  
OCTOBER 3, 2025**

**BETWEEN**

**CATHERINE WANJERI WAMAITHA (SUING AS THE LEGAL ADMINISTRATOR OF THE ESTATE OF ESTHER WAMAITHA MBUGUA) ..... PLAINTIFF**

**AND**

**JOHNSON NGANGA CHUTHA ..... 1<sup>ST</sup> DEFENDANT  
THE LAND REGISTRAR, KIAMBU ..... 2<sup>ND</sup> DEFENDANT  
THE HON. ATTORNEY GENERAL ..... 3<sup>RD</sup> DEFENDANT**

**RULING**

1. By a Notice of Motion dated 3<sup>rd</sup> September 2024, brought under Sections 1A, 1B, and 3A of the [Civil Procedure Act](#) and Order 51 Rule 1 of the Civil Procedure Rules, the Applicant seeks the following orders:
  - i. That the Honourable Court be pleased to direct the Honourable Deputy Registrar to release to the Plaintiff/Applicant the original title that was produced in court as an exhibit during trial.
  - ii. That the costs of this application be provided for.
2. The application is premised on the grounds appearing on its face together with the supporting affidavit of Catherine Wanjeri Wamaitha sworn on even date.

**The Applicant's Case**

3. The Applicant averred that during the trial, her late mother produced the original title for the suit property in support of her case, and judgment was ultimately delivered on 25<sup>th</sup> May 2023 in her favour.



She further averred that the Court of Appeal granted a stay of execution of the judgment and added that they do not intend to deal with the suit property.

4. She argued that although the Respondent claims ownership of the suit property, he would not be prejudiced if the title is released.

#### **The 1<sup>st</sup> Respondent's Case**

5. The 1<sup>st</sup> Respondent opposed the application through his replying affidavit, sworn on 29<sup>th</sup> October 2024.
6. He asserted that he had appealed against the judgment dated 25/5/2023 and had obtained a stay of its execution. He further stated that the ownership of the suit property is disputed. Additionally, he mentioned that the Applicant had sought orders to cancel his title and evict him from the property in the primary suit. He argued that the Applicant has not demonstrated that the court will not protect the title.
7. He contended that the Applicant would not suffer any loss if the title deed remains in the custody of the court.
8. The application was canvassed by way of written submissions. Both parties filed their submissions, which I have duly considered.

#### **Analysis and Determination**

9. Having considered the application, the respective affidavits, and the rival submissions, the only issue for determination is whether the Applicant is entitled to the orders sought.
10. The Applicant has sought the release of the original title produced by her late mother during the trial. The Respondent is apprehensive that the Applicant might dispose of the suit property if the title deed is released.
11. It is not in dispute that there is a stay of execution of the judgment in place. The Applicant will not be prejudiced if the title remains under the court's custody until the appeal is determined.
12. Based on the foregoing, I find that the application is devoid of merit and the same is hereby dismissed with costs.

**RULING DATED, SIGNED, AND DELIVERED VIA MICROSOFT TEAMS THIS 3<sup>RD</sup> DAY OF OCTOBER, 2025.**

.....

**T. MURIGI JUDGE**

In the Presence of:-

Thande for the 1<sup>st</sup> Respondent

Ms Jilo holding brief for Kithi for the Third Party Ahmed – Court Assistant

