



REPUBLIC OF KENYA



KENYA LAW
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**Muguku v Kingori & 3 others (Environment and Land Appeal
E004 of 2023) [2025] KEELC 5653 (KLR) (31 July 2025) (Ruling)**

Neutral citation: [2025] KEELC 5653 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NYERI
ENVIRONMENT AND LAND APPEAL E004 OF 2023**

**JO OLOLA, J
JULY 31, 2025**

BETWEEN

MOLINE WANJIRU MUGUKU APPLICANT

AND

JULIUS GIKONYO KINGORI 1ST DEFENDANT

**WINFRIED NYOKABI KINGORI (LEGAL REPRESENTATIVE OF PETER
KINGORI WANJOHI - DECREASED 2ND DEFENDANT**

WAHOME MUKAMI 3RD DEFENDANT

DAVID GACHUCA MUGUKU 4TH DEFENDANT

RULING

1. By the Chamber Summons dated 14th March, 2024, Moline Wanjiru Muguku (the Applicant) prays for orders as follows:
 1. That this Honourable Court may be pleased to stay the execution and/or disposing land parcel No. xxx and xxx during the pendency of the said Appeal No. ELCA E004 of 2023 in the High Court at Nyeri;
 2. That Notice of this application to Respondents be dispensed with for reasons of urgency;
 3. That title issued to any of the Respondent or anybody else during pendency of hearing of ELC No. 31 of 2019 be declared null and void; and
 4. That the cost of this application be in the cause.



2. The application is supported by an Affidavit sworn by the Applicant wherein she deposes as follows at the relevant paragraphs 1 to 5 thereof:
 - “ 1. That I am the applicant herein as a substitute of my husband Macmillan Muguku Karinga who is blind.
 2. That my husband Macmillan Muguku lost in his ELC No. 31 of 2019 while his son David Gachuha Muguku and other defendants are the one who forged documents of title to land from my land Watuka/xxx;
 3. That when my husband reported to police through me fact in OB’s stated in my husband’s letter dated 8th January 2021 no action is taken against our son Gachuha Muguku fact in Annex MKD MMN 1”;
 4. That it was unfair, unjust and unconstitutional for my husband to loose in his ELC No. 31/2019 while titles of the forged lands Nyeri/Watuka/xxx and xxx were issued to defendants while map of my husband’s land Watuka/2030 was not sub-divided fact in Annex MKD MWM 2”;
 5. That I make this affidavit in support of my application for stay of execution and/or disposing any of the said lands while appeal No. 4 of 2023 is heard and disposed off.”
3. The four (4) Respondents are opposed to the application. In addition to their Grounds of Opposition and a Replying Affidavit sworn on 30th September 2024, they have filed a Preliminary Objection dated 6th May, 2024 objecting to the Chamber Summons on the grounds that:
 - i. The Appeal is filed by a non-suited person who was not a party in the Lower Court; and
 - ii. The Appeal is otherwise misconceived or incompetent.
4. I have carefully perused and considered both the Respondents’ Notice of Preliminary Objection as well as the application for stay of execution. I have similarly perused and considered the submissions placed before me by the Learned Advocates representing the parties herein.
5. By their Preliminary Objection as filed herein, the Respondents object to the Appeal on account that it has been instituted by a non-suited person and that the same is therefore misconceived and incompetent. I was however unable to find any basis for that position.
6. While it was indeed true that the suit in the Lower Court was instituted by the Applicant’s husband, one Macmillan Muguku Karinga, it was evident from the Replying Affidavit of David Gachuha Muguku that the said Macmillan Muguku Karinga was a person with a disability and that he was considered unable to handle his own affairs. On that account, the Applicant herein made a formal application on 10th February, 2023 seeking to be appointed as the Plaintiff’s guardian.
7. Having been so appointed, it was clear to me that the Applicant was clothed with authority to make decisions for and on behalf of the Plaintiff. The contention that the Applicant as an individual had not suffered any loss and could therefore not bring the present action was therefore misconceived and without any basis.
8. Turning to the application before the court, the Applicant has sought for an order of stay of execution and for the title issued to any of the Respondents during the pendency of the trial before the Lower Court to be declared null and void.



9. As can be discerned from a perusal of Paragraph 4 of the Supporting Affidavit to her application, the Applicant considers it unfair and unjust that her husband had lost the suit filed before the Lower Court. From the material placed before the court, it was evident that the Plaintiff had by his plaint dated 13th March 2019 sought for an order that the registration of the parcels of land known as Nyeri/Watuka/xxx; xxx and xxx into the names of the Defendants was unlawful. He had further sought to have the registration cancelled and for the properties to revert to the original title which the Plaintiff referred to as Nyeri/Watuka/xxx. In addition, the Plaintiff wanted the Defendant to be ordered to vacate the said properties.
10. Those were the prayers that were dismissed by the court and it was difficult to see how an order of stay of execution would aid the Applicant herein. Considering such a matter in *Kanwal Sarjit Singh Dhiman –vs- Keshavji Jivraj Shah (2008) eKLR*, the Court of Appeal held as follows:

“The second prayer in the application is for stay (of execution) of the order of the superior court made on 18th December, 2006. The order of 18th December, 2006 merely dismissed the application for setting aside the judgment with costs. By the order, the superior court did not order any of the parties to do anything or refrain from doing anything or to pay any sum. It was thus, a negative order which is incapable of execution save in respect of costs only (see *Western College of Arts and Applied Sciences v. Oranga and Others [1976] KLR 63* at page 66 paragraph C).’ there is nothing the applicant has lost. The refusal simply means that the applicant stays in the situation he was in before coming to court and therefore the issues of substantial loss that he is likely to suffer and or the appeal being rendered nugatory does not arise...”
11. That was indeed the same case herein. The trial court simply dismissed the Plaintiff’s prayers and there was nothing capable of being stayed as the dismissal order did not require the parties to do or refrain from doing anything.
12. In the premises both the Preliminary Objection dated 6th May 2024 and the Chamber Summons dated 14th March 2024 were without merit. Both are hereby dismissed.
13. Each party shall bear their own costs.

RULING DATED, SIGNED AND DELIVERED IN OPEN COURT AND VIRTUALLY AT MOMBASA THIS 31ST DAY OF JULY, 2025

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J.O. OLOLA

JUDGE

In the presence of:

- a. Ms. Firdaus Court Assistant.
- b. No Appearance for the Appellants
- c. Ms. Njuguna holding brief for Gikonyo Advocate for the Respondents

