



Deputy County Commissioner, Kasarani Sub-County Nairobi County & 2 others v Warirah & another (Civil Application E159 of 2025) [2025] KECA 1725 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1725 (KLR)

**REPUBLIC OF KENYA
IN THE COURT OF APPEAL AT NAIROBI
CIVIL APPLICATION E159 OF 2025
M NGUGI, AO MUCHELULE & WK KORIR, JJA
OCTOBER 24, 2025**

BETWEEN

**DEPUTY COUNTY COMMISSIONER, KASARANI SUB-COUNTY NAIROBI
COUNTY 1ST APPLICANT**

**MINISTRY OF INTERIOR & CO-ORDINATION OF NATIONAL
GOVERNMENT 2ND APPLICANT**

THE HON ATTORNEY GENERAL 3RD APPLICANT

AND

REUBEN MAGONDU WARIRAH 1ST RESPONDENT

**NATIONAL GOVERNMENT CONSTITUENCIES DEVELOPMENT
FUND 2ND RESPONDENT**

*(An application for an order of injunction and an order for stay of execution
against the judgment and decree of the Environment and Land Court at Nairobi
(L.N. Mbugua, J.) dated 12th February 2025 in ELC No. 119 of 2020)*

RULING

1. The case by the 1st respondent, Reuben Magombu Warirah, before the Environment and Land Court (ELC) at Nairobi was that he was the registered proprietor of LR No. 24187 (IR No. 86729) in Kasarani in Nairobi; that the Deputy County Commissioner, Kasarani (1st applicant), the Ministry of Interior and Coordination of National Government (2nd applicant) and the National Government Constituencies Development Fund Board (the 3rd respondent) were laying claim to it as being public land, had stopped him from developing the property or having quiet enjoyment of the same; and had erected a permanent wall around it to stop him from accessing it. In the claim for trespass, he asked



- the court to declare him to be the rightful owner with indefeasible title, to grant him a permanent injunction and to order the payment to him of general damages.
2. The 1st applicant and the learned the Attorney General (3rd applicant) filed a statement of defence to deny the allegations contained in the plaint.
 3. When the suit was heard, the 1st respondent testified in support of his case. No evidence was called by the defence. In a judgment delivered on 12th February 2025 by the learned L.N. Mbugua, J., it was found that the 1st respondent was the registered proprietor of the suit land and that the actions by the applicants and the 2nd respondent amounted to trespass. The prayers for declaration and permanent injunction were issued. The 1st respondent was awarded Kshs.23 million in general damages and an order given for the removal of the wall and the offending signage.
 4. The applicants were aggrieved, and filed a notice of appeal dated 18th February 2025. Before us is an application dated 13th March 2025 under Rule 5(2)(b) of the Court of Appeal Rules for stay of execution of the decree and for an injunction pending the hearing and determination of the intended appeal. In the grounds and supporting affidavit, the applicants contend that the suit property was public land; that the dispute between the parties was a boundary dispute which the ELC had no jurisdiction to hear or determine; that the matter belonged to the Land Registrar under sections 17 and 18 of the *Land Registration Act*; and that, unless stay and injunction are issued, the public stands to lose colossal amounts of money which would render the intended appeal nugatory. In the annexed draft memorandum of appeal, the issue of lack of jurisdiction on the part of the trial court was raised. It was also stated that the trial court had not considered that the dispute was over public land.
 5. The application was opposed by the 1st respondent who reiterated that there was no evidence availed by the defence during the hearing. That no objection had been taken to the jurisdiction of the court; and that, in any case, he was a man of means who was able to make good whatever will have been paid to him; if the intended appeal were to ultimately succeed. It was further submitted that there was no evidence that this was public land.
 6. Learned counsel Mr. Odongo for the applicants and learned counsel Mr. Lubulellah for the 1st respondent each filed written submissions which we allowed to be highlighted. The 2nd respondent did not file written submissions and did not attend the hearing.
 7. Our jurisdiction under Rule 5(2)(b) of the Court of Appeal Rules is original and discretionary. For the applicants to be granted stay and or injunction at this stage, they must show that they have an arguable appeal, and that, if stay or injunction is not granted and the intended appeal finally succeeds, their intended appeal will have been rendered nugatory (see Stanley Kangethe Kinyanjui v Tony Keter & 5 Others [2013] eKLR).
 8. The question we ask ourselves is whether the intended appeal raises even a single bona fide arguable point. It was submitted on behalf of the 1st respondent that the applicants did not raise the issue of jurisdiction in their defence to the claim, and neither did they ask the trial court, by a preliminary point or otherwise, to determine the issue of jurisdiction. All that we can point out at this stage is that an issue that was not raised in the trial and a decision made thereon may not be raised for the first time on appeal. Secondly, the applicants having not called any evidence during trial, the evidence of the 1st respondent remained unchallenged. We wonder whether there would be a material basis upon which the judgment of the trial court can be attacked.
 9. In our view, no single arguable point has been raised by the applicants.



10. On whether, if stay or injunction is not granted, the applicants will be left in such a perilous position that damages cannot reasonably compensate, it is notable that the 1st respondent swore that he was a man of means who was ready to invest heavily in the suit property by putting up a mall. This was not challenged by the applicants. We do not, in the circumstances, find that the nugatory aspect has been demonstrated.
11. The result is that the application lacks merits, and is dismissed with costs.

DATED AND DELIVERED AT NAIROBI THIS 24TH DAY OF OCTOBER 2025.

MUMBI NGUGI

JUDGE OF APPEAL

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A.O. MUCHELULE

JUDGE OF APPEAL

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W. KORIR

JUDGE OF APPEAL

I certify that this is a true copy of the original

Signed

DEPUTY REGISTRAR.

