

REPUBLIC OF KENYA

IN THE ENVIRONMENT AND LAND COURT AT NAIROBI

ELC LC NO. E273 OF 2025

(FORMERLY MILIMANI HCC NO. 3698 OF 1995)

KINLUCK HOLDINGS LIMITED

PLAINTIFF

VERSUS

MINT HOLDINGS LIMITED 1ST

DEFENDANT

MACHARIA NJERU 2ND

DEFENDANT

RULING

1. What is before the Court for determination is the Plaintiff's Notice of Motion application dated the 24th January 2025, where it seeks the following orders:

- a) **That this Honourable Court be pleased to direct/authorize/order the Deputy Registrar of this Honourable court to execute the necessary**

transfer documents on behalf of the 1st Respondent to facilitate the retransfer of the property known as LR No. 12494/10 to the Applicant.

b) That this Honourable Court be pleased to order that the 1st Respondent herein do deliver to the Applicant herein the mother title in respect of LR No. 12494/10 within 30 days.

c) That this Honourable Court be pleased to order that the Chief Land Registrar Nairobi, do facilitate the manual retransfer of the said LR No. 12494/10 from the Respondent to the Applicant.

d) That the costs of this application be provided for.

2. The application is premised on grounds on its face and on the supporting affidavit of the Plaintiff's Managing Director, one Paul Mwaura Kinyanjui. He avers that following a dispute resulting from an unpaid balance in the Sale Agreement dated 29th August 1995 between the Plaintiff and the 1st

Defendant, the Plaintiff filed **High Court Civil Case No. 3698 of 1995: Kinluck Holdings Ltd v Minto Holdings Ltd and Macharia Njeru** in which judgement was entered in the Plaintiff's favour and the Defendants herein were ordered to pay him the balance of the purchase price and interest.

3. The Plaintiff was however aggrieved by the said decision. Subsequently, it filed **Civil Appeal No. 69 of 2011** and vide its judgment of 5th April 2019, the Court of Appeal ordered that the suit property be transferred to the Appellant (Plaintiff herein). Being dissatisfied with the Court of Appeal's judgment, the 1st Defendant herein filed an application in the Court of Appeal, being **Nairobi Court of Appeal Civil Application No. 6 of 2019 Mint Holdings Limited v Kinluck Holdings Limited & another**, for certification of leave to appeal to the Supreme Court but the same was declined on 24th May 2024.

4. He deposes that subsequently the Plaintiff through its advocates demanded that the 1st Defendant retransfer the suit property but it has not done so to date. Further, that the suit property has been gazetted for conversion and is under conversion **No. Nairobi/Block 149/10 Lang'ata**. He reiterates that this Court has jurisdiction to execute the Court of Appeal's Orders under Section 4 of the Appellate Jurisdiction Act and Section 29 and 30 of the Civil Procedure Act.
5. The application is opposed by the 1st Defendant vide the replying affidavit of its director, Samuel Keengu Nyamweya. He avers that the 1st Defendant has already approached the Supreme Court vide **SCAPPL/E019/2024** in which it seeks stay of the Court of Appeal's judgment. He contends that it would be prudent to await the Supreme Court's outcome in the matter since it is the 1st Defendant who would suffer irreparable damage if execution is allowed, as it has been in occupation of the suit property for over thirty (30) years and

made significant developments thereon. He also contends that the Land Registrar was not a party in the suit between the parties and it is misleading to seek for orders against the said office.

6. In response, the Plaintiff filed a further affidavit in which he avers that the Court of Appeal's judgment delivered on 5th April, 2019, is yet to be set aside by the Supreme Court. He also admits that the 1st Defendant has filed an application for certification in the Supreme Court and contends that the same does not operate as stay of execution.
7. The application was canvassed by way of written submissions.

Submissions

8. The Plaintiff submits that its application is merited since Section 34 of the Civil Procedure Act bars a party from filing a separate suit where such issues have been heard and determined by a Court of competent jurisdiction. Further,

that Section 4 of the Appellate Jurisdiction Act including Sections 29 and 30 of the Civil Procedure Act grants this Court jurisdiction to execute a judgement of the Court of Appeal as if it were a judgment of the High Court. It also submits that pursuant to Section 23 A of the Supreme Court Act, no application for a stay of execution can be made when an Appeal/Petition has not been filed thus there is no bar to the execution of the Court of Appeal's judgement as the 1st Defendant has not filed an appeal to the Supreme Court. It reiterates that one who is entitled to exclusive possession of a property is deemed to be in possession.

9. To buttress its averments, it relied on the following decisions: **Ropart Trust Co. Ltd v LTI Kisii Safari Limited & 3 Others (Environment & Land Petition 6 of 2022) [2022] KEELC 14563 (KLR) (26 October 2022) (Ruling); Nazir Jinnah v Asmahan Peterson & 2 Others [2013] eKLR; South Nyanza Sugar Company Ltd v Alfred Sagwa Mdeizi t/a Pave Auctioneers [2010] eKLR;**

M'Ikiara M'Rinkanya & Another v Kabeere M'Mbijiwe (1982-88) 1KAR 196 and James Wainaina Imunyio & 6 others v Karanja Mbugua & Co. Advocates [2012] eKLR.

10. On its part, the 1st Defendant submits that the issue of certification for leave and stay of execution is yet to be exhaustively determined by the Supreme Court. It points out that Article 163 (4) (b) of the Constitution requires that either the Supreme Court or the Court of Appeal has the power to certify an appeal to the Supreme Court and Article 163 (5) of the Constitution provides that the Supreme Court can vary, affirm or overturn the decision of the Court of Appeal. It also submits that it has always been in occupation of the suit property and has been during the journey of litigation between the Plaintiff and itself, thus proceedings should be halted until the Supreme Court pronounces itself on the issue of stay and certification for review of the Court of Appeal

judgment. It argues that the pendency of the application, makes the instant application sub judice in the meaning of Section 6 of the Civil Procedure Act and as defined in the case of **Kenya National Commission on Human Rights v Attorney General; Independent Electoral & Boundaries Commission & 16 Others (Interested Parties) [2020] KESC 54 (KLR)**.

Analysis and Determination

11. I have considered the instant Notice of Motion application including the respective affidavits and rivalling submissions and the only issue for determination is whether this Court should grant orders allowing the Plaintiff to execute the Court of Appeal's judgement issued in **Civil Appeal No. 69 of 2011** on 5th April 2019.

12. It is not in dispute that through the judgement delivered on 5th April, 2019 in Civil Appeal No. 69 of 2011, the Court of Appeal ordered that the suit property be transferred to the Plaintiff herein. The Plaintiff has sought to execute the

impugned judgement of the Court of Appeal, which the 1st Defendant insists that the process should await outcome of the application for certification pending before the Supreme Court. I note despite the fact that the said judgment was delivered more than five years ago, the 1st Defendant has declined to transfer the suit property to the Plaintiff as had been directed by the Court of Appeal. The 1st Defendant insists that it is yet to exhaust all the available options in arguing its case due to the pendency of its application for stay and review at the Supreme Court being **SCAPPL/E019/2024**.

13. In response, the Plaintiff argues that since the 1st Defendant has not filed an Appeal in adherence to Section 23A of the Supreme Court Act, the application before the Supreme Court does not bar the execution process from proceeding.

14. I note after the Court of Appeal issued its judgement in **Civil Appeal No. 69 of 2011**, the 1st Defendant filed **Nairobi Court of Appeal Civil Application No. 6 of 2019 Mint**

Holdings Limited v Kinluck Holdings Limited & Another for certification of leave to appeal to the Supreme Court but the same was declined on 24th May 2024.

15. Under Section 4 of the Appellate Jurisdiction Act and Sections 29 and 30 of the Civil Procedure Act, this Court has power to execute decrees or orders of the Court of Appeal as if they were its own judgments.

16. Section 4 of the Appellate Jurisdiction Act provides that:

“Any judgment of the Court of Appeal given in exercise of its jurisdiction under this Act may be executed and enforced as if it were a judgment of the High Court.”

17. Further, Section 29 of the Civil Procedure Act stipulates thus:

**“29. Definition of "court which passed a decree"
The expression "court which passed a decree", or words to that effect, shall, in relation to the**

execution of decrees, except where the context otherwise requires, include;

- (a) Where the decree to be executed has been passed in the exercise of appellate jurisdiction, the court of first instance; and
- (b) Where the court of first instance has ceased to exist or to have jurisdiction to execute it, the court which, if the suit wherein the decree was passed were instituted at the time of making the application for the execution of the decree, would have jurisdiction to try such suit.”

18. While Section 23A of the Supreme Court Act states that:

“(1) The Court may issue an order for stay of execution, an injunction, a stay of further proceedings or any other conservatory or interim orders, on such terms as the Court may deem fit where a party has—

- (a) Instituted a petition of appeal as of right under Article 163(4)(a) of the Constitution; or*

(b) Obtained a certification under Article 163(4) (b) of the Constitution and instituted a petition.

(2) An application under subsection (1) shall only be made after filing the petition before the Court.”

19. In National Land Commission v Tom Ojienda & Associates & 2 Others (Application E051 of 2023) [2024] KESC 16 (KLR) (26 April 2024) (Ruling) Neutral citation: [2024] KESC 16 (KLR), the Supreme Court reiterated that it has jurisdiction to review a decision by the Court of Appeal for certification of a matter before it and stated thus:

“This court has in several of its decisions including in Hermanus Phillipus Steyn v Giovanni Gnechchi Ruscone Appl 4 of 2012 [2013] eKLR.... .. held that an application for leave, as a matter of good practice, should originate in the Court of Appeal, which would be better placed to certify whether a matter of general public importance is involved. If the applicant is dissatisfied with the

decision in that regard, the party would be at liberty to seek a review under article 163 (5) of the Constitution. This requirement is further encapsulated in section 15B (2) of the Supreme Court Act...”

20. I note that Section 23A of the Supreme Court Act stipulates conditions for granting of stay of execution which include; where a Petition of Appeal has been instituted; where a party has obtained a certification and that an application for stay shall only be filed after a Petition has been filed before the said Court.

21. In this instance, the Court of Appeal declined an application for certification and never granted stay of execution. Further, there is no certification by the Supreme Court nor a Petition filed therein. Based on the facts as presented while relying on the legal provisions cited and associating myself with the decision quoted while applying them to the circumstances at hand, I find that there is no Order from the Court of Appeal barring the Plaintiff from seeking for

execution of the Judgment including resultant Decree emanating therefrom.

22. In the foregoing, I find the instant Notice of Motion application merited and will allow it in the following terms:

- i. An Order be and is hereby issued directing/ authorizing the Deputy Registrar of this Honourable Court to execute the necessary transfer documents on behalf of the 1st Respondent to facilitate the retransfer of the property known as LR No.12494/10 to the Applicant.**
- ii. An Order be and is hereby issued directing the 1st Respondent to deliver to the Applicant the mother title in respect of LR No.12494/10 within thirty (30) days from the date hereof.**
- iii. An Order be and is hereby issued directed at the Chief Land Registrar Nairobi, to facilitate the manual retransfer of the said LR No. 12494/10 from the 1st Respondent (MINT HOLDINGS LTD) to the Applicant (KINLUCK HOLDINGS LIMITED).**

iv. Costs will be in the cause

**DATED SIGNED AND DELIVERED AT NAIROBI THIS
30TH DAY OF OCTOBER, 2025**

**CHRISTINE OCHIENG
JUDGE**

In the presence of:

Nduta Kamau holding brief for Dr. Kamau Kuria SC for Plaintiff

Court Assistant: Joan