



REPUBLIC OF KENYA



**KENYA LAW**  
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**Githeki v Eriya (Miscellaneous Application Probate & Administration  
E002 of 2025) [2025] KEHC 15280 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEHC 15280 (KLR)

**REPUBLIC OF KENYA  
IN THE HIGH COURT AT NYAHURURU  
MISCELLANEOUS APPLICATION PROBATE & ADMINISTRATION E002 OF 2025  
LN MUTENDE, J  
OCTOBER 30, 2025**

**BETWEEN**

**JECINTA WANGARI GITHEKI ..... INTENDED APPLICANT**

**AND**

**CHARLES EBEIYO ERIYA ..... RESPONDENT**

**RULING**

1. The substratum of the matter is that Jecinta Wangari Githeki, the Applicant, purchased a parcel of land from Maria Aduka Laruma (Deceased) who put her in possession of the land but disappeared. In an endeavor to have the land transferred to her she sued her in Nanyuki CMCC No.41 of 2011, a suit that proceeded ex-parte and a judgment was entered in her favour. Following an application by the Respondent, Charles Ebeiyo Eriyo. It turned out that she had sued a deceased person. In the result orders obtained were nullified.
2. Subsequently she instituted Nyahururu CMC ELC No. 11 of 2019 against the Respondent, the legal representative of the Estate of the deceased. The suit turned out to be time barred hence she withdrew it.
3. Later on, the Applicant through an application dated 21/05/2019 sought to restrain the Respondent from evicting and/or interfering with her use of Plot No. 533 Extension No. 302 Marmanet Settlement Scheme and through an order dated 21/04/2021, the trial court issued injunctive orders against the Respondent who preferred an appeal against the order, but, the appeal was dismissed on 18/01/2024.
4. In the meantime, the Applicant, approached this court through a Notice of Motion dated 5<sup>th</sup> May, 2025, seeking orders thus;
  1. Spent.



2. That pending the hearing and determination of this application inter-parties, there be a stay of proceedings of Nyahururu CM Succession Cause No. 20 of 2019.
3. That pending the hearing and determination of the intended appeal, there be a stay of proceedings of Nyahururu CM Succession Cause No. 20 of 2019.
4. Spent.
5. That pending the hearing and determination of the intended appeal, an order of temporary injunction restraining the Respondent, his family members, representatives, employees, servants, agents, and/or anyone else acting for, on behalf of, through or at the behest, direction or instructions of the Respondent, and/or claiming under the Respondent from evicting and/or in any way interfering with the Intended Appellant/Applicant's quiet use, occupation and/or access of L.R. No. Laikipia/ Marmanet/Ext 533 and forbidding the registration of dispositions and the making of entries into the said land and/or lands' register.
6. That the costs of this application be costs in the cause.
5. The application is premised on grounds inter alia;
  1. That the Intended Appellant/Applicant is dissatisfied and aggrieved by the ruling delivered on the 22<sup>nd</sup> April, 2025 and she intends to file an appeal.
  2. That the intended appeal raises salient and/or pertinent issues of law and facts hence has overwhelming chances of success.
  3. That Nyahururu CM Succession Cause No. 20 of 2019 has been scheduled for hearing of summons for confirmation of grant on 6<sup>th</sup> May, 2025.
  4. That unless the proceedings in Nyahururu CM Succession Cause No. 20 of 2019 are stayed, the grant will end up being allowed as sought and the same will certainly be detrimental and prejudicial to the Intended Appellant/Applicant.
  5. That the Intended Appellant/Applicant has been in occupation and use of L.R. No. Laikipia/ Marmanet/ Ext 533 for over 40 years and this honourable court could not have given the orders of temporary injunction if it was not satisfied that indeed the Intended Applicant did reside thereon.
  6. That currently, the Intended Appellant/Applicant has planted crops thereon and if the hearing proceeds, the Respondent may go ahead and destroy the maize crops thereon as well as demolish the structures thereon.
  7. That the Respondent will be prejudiced if the orders sought herein are granted.
  8. That the application has been made without unreasonable delay.
  9. That it is in the interest of justice that this honourable court grants the orders sought herein.
6. In response thereto, the Respondent deposes that the application has been overtaken by events as the grant was confirmed on 6<sup>th</sup> May, 2025 and is pending typing and signing.
7. That, the Applicant had filed an application in Nyahururu CM Succession Cause No. 20 of 2019 seeking a temporary injunction pending hearing and determination for the summons of confirmation of grant, which was opposed. A ruling was delivered on 29<sup>th</sup> April, 2021 and the Respondent being aggrieved appealed and the High Court upheld the ruling of the trial court.



8. That thereafter, Nyahururu CM Succession No. 20 of 2019 was heard on merits and affirmed that the Applicant was not in possession of the land and thus the prayer of temporary injunction is res-judicata.
9. That the application is an attempt to appeal and/or review the judgment of Nyahururu CM Succession No. 20 of 2019, and allowing the application will only lead to Respondent's eviction and amount to giving a share of the Estate of Maria Aduka Lorumo, yet the honourable trial Magistrate adjudged that the Applicant does not have any interest nor a creditor to the said Estate, and that the Applicant stands to suffer no prejudice.
10. The application was disposed through written submissions. I have considered the application, supporting affidavits, annexures thereto and rival arguments.
11. The relief sought is two pronged. On the question of stay of proceedings, the remedy is sought pending filing of an appeal following the decision of the court that dismissed the Protest that paved way for confirmation of the grant of letters of Administration in Succession Cause No. 20 of 2019 and subsequent issuance of the certificate of confirmation of the grant. The stated order of the court closed the case until further orders, be it appeal, revocation or annulment in event of sufficient reasons being adduced.
12. As demonstrated by the Applicant through the draft Memorandum of appeal, there is an intention to appeal but the appeal is yet to be filed, hence proceedings cannot be stayed.
13. The second limb of the application is the prayer for a temporary injunction pending hearing and determination of the intended appeal. The order sought is a relief that is usually obtained by a party who cannot be compensated by monetary damages. In *Giella v Cassman Brown & Co. (1973)E.A.358* it was stated that an applicant must show that they will suffer irreparable injury that cannot be adequately compensated by damages.
14. In the instant case what is being sought is a temporary order pending the alleged intended appeal which is yet to be filed to date. In the circumstances this court declines to grant the order sought.
15. In the upshot, the application fails and is dismissed with costs to the Respondent.
16. It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY THIS 30<sup>TH</sup> DAY OF OCTOBER, 2025.**

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**L.N. MUTENDE**

**JUDGE**

