KENYA LAW
THE NATIONAL COUNCIL FOR LAW REPORTING
Where Legal Information is Public Knowledge

Ouko & another v Manoti (Civil Application E150 of 2025) [2025] KECA 1728 (KLR) (24 October 2025) (Ruling)

Neutral citation: [2025] KECA 1728 (KLR)

REPUBLIC OF KENYA

IN THE COURT OF APPEAL AT NAIROBI

CIVIL APPLICATION E150 OF 2025

K M'INOTI, AO MUCHELULE & GV ODUNGA, JJA

OCTOBER 24, 2025

BETWEEN

ROSELYN DOLA OUKO .... 1ST APPLICANT

AARON TAFARI OUKO .... 2ND APPLICANT

AND

STEPHEN KENGERE MANOTI .... RESPONDENT

(Being an application for an order of stay of execution against the judgment and decree of the Environment and Land Court at Nairobi (L.N. Mbugua, J.) dated 17th December 2024 in ELC NO. 414 OF 2018 (O.S))

RULING

1. The evidence accepted by the Environment and Land Court (ELC) at Nairobi (L.N. Mbugua, J.) was that land parcel No. LR 3589/6 measuring about 87.5 acres belongs to the deceased Jason Atinda Ouko. In 1988 the respondent Stephen Kengere Manoti entered into an agreement to buy 3 acres of the parcel of the land. He paid the purchase price and was put into possession. He set up his residential home there and has extensively developed the 3 acres. In 1995, the 3 acres were excised to reflect the portion as LR No. 3589/56. Stamp duty was paid. The deceased did not manage to have the 3 acres registered in the name of the respondent because of the many restrictions and caveats on the title. This was the position when he died in 1996. The respondent pursued the applicants Roselyn Dola Ouko and Aaron Tafari Ouko, being administrators of the estate of the deceased, for the transfer without success.

2. This is what led the respondent to sue the applicants before the ELC seeking a declaration that he had become entitled to the 3 acres by adverse possession. The applicants opposed the suit. The fact that the respondent had been in possession of the 3 acres since 1988 was admitted, but it was denied that he had paid the full purchase price. Their case was that the respondent had paid only Kshs.50,000/=

of the purchase price of Kshs.550,000/=. Lastly, that the respondent was on the land with the owner's permission and could not therefore claim adverse possession.

3. The trial court found for the respondent. The land registrar was directed to register LR No. 3589/56 in the name of the respondent.

4. The applicants were aggrieved by the decision, filed a notice of appeal, and have now applied for the stay of execution of the judgment and decree pending the hearing and determination of the intended appeal. The application was made under Rule 5(2)(b) of the Court of Appeal Rules, 2022 and section 3A of the *Appellate Jurisdiction Act*. From the material on record, the applicants' complaint is that, the learned Judge erred by finding that on the evidence, the elements of adverse possession had been established. They further complain that, given that the respondent's entry into the suit land was that of a purchaser, it could not be found that he had become entitled to the suit land by adverse possession.

5. On the question whether or not the intended appeal will be rendered nugatory, if stay is not granted, the applicants expressed the fear that the respondent may dispose of the suit property now that registration had been ordered in his name.

6. We were addressed by learned counsel Ms. Lukoye for the applicants and learned counsel Mr. Maina for the respondent on their written submissions.

7. This Court has unfettered discretion to order stay of execution pending appeal, or intended appeal. The jurisdiction is original, with the intention being to do justice to the parties given the peculiar facts of the case (see Cooperative Bank of Kenya Limited -vs- Bankers Insurance & Finance Union (Kenya) [2015] eKLR). The applicant has to persuade the Court that he has an arguable appeal, or intended appeal, and that unless the order of stay is granted, the appeal or intended appeal, were it to eventually succeed, would be rendered nugatory. The two limbs must both be demonstrated (see Chris Munga N. Bichage -vs- Richard Nyagaka Tongi & 2 Others [2013] eKLR). Lastly, an arguable appeal is not one that will succeed. It is merely one that is deserving of consideration by the full Court.

8. Given the low threshold on arguability, we have no hesitation in finding that the appellants have raised points which ought to be fully argued before the full Court when that appeal finally comes up.

9. In determining whether the intended appeal will be rendered nugatory, if stay is not granted, we consider that the respondent has been on the suit property for about 37 years. The respondent indicated that he did not intend to sell the suit property on which he had established his home. He does not have title to the land which he can pass to a third party, although there is now an order to the land registrar to register the land in his name.

10. We are called upon to consider the conflicting claims. If there is no stay, and the intended appeal ultimately succeeds, the applicants will lose the property in the sense that it will have been transferred to the respondent. On the other hand, the respondent has been on the land for 37 years without title, and no substantial harm will be suffered if he waits for the final determination of the intended appeal. We find that the applicants have shown that the intended appeal will be rendered nugatory, if stay is not granted.

11. We allow the application, and grant stay, but on condition that the record of appeal be filed and served within 60 days from today. For the avoidance of doubt the effect of stay, should the above be complied with, is to maintain the status quo as regards the possession and title as currently prevailing pending the hearing and the determination of the intended appeal. The stay will lapse automatically if the condition is not met.

12. Costs will abide the outcome of the appeal.

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

K. M'INOTI

...............................**.**

JUDGE OF APPEAL

A. O. MUCHELULE

....

JUDGE OF APPEAL

G. V. ODUNGA

..................................**.**

JUDGE OF APPEAL

I certify that this is a true copy of the original.

Signed

DEPUTY REGISTRAR.