



**Riabai Pentecostal Church v Ndiritu (Environment and Land Appeal E052 of 2025) [2025] KEELC 7389 (KLR) (30 October 2025) (Ruling)**

Neutral citation: [2025] KEELC 7389 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT THIKA  
ENVIRONMENT AND LAND APPEAL E052 OF 2025  
JM ONYANGO, J  
OCTOBER 30, 2025**

**BETWEEN**

**RIABAI PENTECOSTAL CHURCH ..... APPELLANT**

**AND**

**RAHAB NJOKI NDIRITU ..... RESPONDENT**

**RULING**

1. The application dated 23<sup>rd</sup> April 2025 seeks a stay of execution of the ruling and orders of the Honourable magistrate issued on 16<sup>th</sup> April 2025 in Civil Suit Number MCELC E069 of 2024 that restrained the Appellant from accessing the property known as Ndumberi/ Riabai/T.413 (hereinafter the suit property).
2. The Appellant contends that unless this Court intervenes, the enforcement of those orders will visit undue hardship and defeat the purpose of the pending appeal, which raises serious and arguable issues deserving full judicial consideration.
3. The Appellant also seeks a stay of proceedings in the subordinate court pending the determination of this appeal.
4. The Appellant further beseeches this Court for injunctive relief to restrain the Respondents from any dealings with or interference upon the suit property.
5. The Appellant further prays that the Court be pleased to order the preservation of the prevailing status quo in respect of the suit property, pending the hearing and determination of the appeal.
6. The application is grounded on the supporting affidavit of Francis Kiaria Kariuki sworn on even date.
7. It is the appellant's case that the ruling in Civil Suit Number MCELC E069 of 2024 effectively barred them from accessing the suit property which they claim to have been in occupation of for the past 35 years.



8. Mr Kariuki avers that after the ruling was issued in Civil Suit Number MCELC E069 of 2024, the Respondent issued them with a demand notice requiring them to vacate the premises by 25<sup>th</sup> April 2025.
9. The application was vehemently opposed by the replying affidavit of Rahab Njoki Ndiritu sworn on 30<sup>th</sup> June 2025.
10. The Respondent challenged the application and termed the averments in the supporting affidavit as falsehoods perpetuated by the Applicants.
11. It is the Respondent's position that she has held title to the suit property since being registered as the proprietor on 11<sup>th</sup> June 1998. Ultimately, the Respondent prays for the dismissal of the application.

### **Issues**

12. Having perused the application, the replying affidavit in opposition, and the parties' written submissions the following issues emerge for determination:

Whether the appellant has demonstrated an arguable appeal

Whether the appellant has satisfied the conditions for the grant of interim reliefs

### **Analysis and Determination**

13. The Court's task in this application is to determine whether the Appellant has met the established legal and equitable thresholds for the grant of the reliefs sought.
14. Each prayer, whether for stay of execution, injunctive protection, stay of proceedings, or preservation of status quo, invokes the Court's discretionary power, to be exercised not capriciously, but upon reasoned satisfaction that justice would be better served by restraint than by haste.
15. This appeal springs from an interlocutory ruling rendered while the main suit still lies unresolved before the lower court. In weighing whether to grant a stay of execution or injunctive relief, this Court must ask whether the appeal discloses an arguable question, not one guaranteed to succeed but one that bears the stamp of genuine controversy.
16. The law does not require certainty of success; it demands only that the appeal should not be a hollow exercise in obstinacy.
17. As the Court observed in *Yellow Horse Inns Ltd v A. A. Kawir Transporters & 4 Others* [2014] eKLR, an arguable appeal is one that calls for the court's reasoned attention, not its indulgence.
18. As emphasized in *UAP Insurance Company Ltd v Michael John Beckett* [2004] eKLR, the question before the Court is not whether the appeal will succeed, but whether it is arguable and may be rendered nugatory if the proceedings are allowed to continue.
19. Having carefully considered the record, the pleadings, and the rival submissions, it is evident that this appeal raises questions that reach beyond mere technicality. The orders challenged touch upon possession, livelihood, and the right to be heard: matters which go to the heart of justice itself.
20. It is in that light that this Court must approach the application before it, conscious that its duty is not only to apply the law but to ensure that its operation does not yield inequity.
21. In their submissions, learned counsel for the Appellant and Respondent appear to act on the assumption that this Court is considering the substantive appeal.



22. It must be emphasized that the appeal remains pending, and it is not the Court's function at this stage to express any view that might prejudice or embarrass the Court that will determine it.
23. The task before this Court is narrowly focused on whether the appellant has demonstrated sufficient grounds for interim relief.
24. Learned counsel for the appellant contends that the honourable magistrate erred in issuing orders prematurely, before the hearing of the main suit. It is submitted that the orders in Kiambu Civil Suit Number Number MCELC E069 of 2024 failed to respect the principles of fair hearing and ventured into substantive matters that ought to have been reserved for the trial proper.
25. While the submissions emphasize this point, they do not precisely address the statutory conditions for a stay of execution.
26. Beyond legal argument, the affidavit evidence demonstrates that the appellants face imminent eviction, a risk that could render the appeal nugatory and occasion irreparable harm. Such harm is neither speculative nor abstract; it is grounded in the immediate realities of execution.
27. The affidavit further shows that the appellants acted without delay by filing the matter less than a month after the ruling of 16<sup>th</sup> April 2025, evidencing diligence and good faith rather than any intention to obstruct the process. Taken together, these factors satisfy the conditions for the exercise of the Court's discretion to grant interim relief, preserving both the subject matter of the appeal and the effectiveness of the judicial process.
28. The principles guiding a stay of proceedings pending appeal are well settled in *William Odhiambo Ramogi & 2 Others v Attorney General & Others; Muslims for Human Rights (Interested Party)* [2020] eKLR.
29. Such a stay lies within the Court's discretion and should only be granted when justified by specific criteria.
30. Here, there is a live appeal before this Court, and allowing proceedings in the magistrates' court to continue would risk rendering the appeal ineffective by altering the property's status and interfering with the appellant's rights.
31. The appeal raises substantial and arguable questions, including whether the magistrate exceeded the proper scope of an interlocutory order and denied the appellant access to the property before a full hearing.
32. The affidavit evidence of the appellant shows that, unless the stay is granted, the appellant faces eviction with attendant loss of possession and interference with the subject matter of the appeal. These constitute exceptional circumstances, as the potential harm cannot be remedied by damages or restored after the fact.
33. Even as the Court considers these matters, it must bear in mind that the appeal itself remains pending. It is not the Court's function at this stage to express any view that might prejudice or embarrass the Court that will determine the substantive appeal.
34. Having granted the prayer for stay of proceedings pending determination of the appeal, it is unnecessary to consider the prayer for stay of execution separately.



- 35. The term “stay,” as defined in Black’s Law Dictionary, 10th Edition, refers to:
  - “the postponement or halting of a proceeding, judgment, or the like; an order to suspend all or part of judicial proceedings or a judgment resulting from those proceedings — also termed stay of execution; suspension of judgment.”
- 36. Once the proceedings are stayed, any action premised upon them, including execution, is automatically suspended. Everything is effectively brought to a halt, rendering a separate determination of the stay of execution superfluous.
- 37. In the exercise of my discretion, and in light of the factors outlined above, the Court finds that the same rationale justifying a stay of proceedings also supports the grant of ancillary reliefs sought by the Appellant.
- 38. The risk of irreparable harm, the arguable nature of the appeal, and the promptness of the application justify injunctive protection to maintain possession, a stay of proceedings in the lower court, and measures to preserve the status quo pending determination of the appeal. Such relief strikes the proper balance between the rights of the parties, safeguarding the subject matter of the dispute while respecting the orderly administration of justice.
- 39. In view of the foregoing, I am satisfied that the Appellants have demonstrated an arguable appeal that the appeal may be rendered nugatory if interim relief is not granted, and that there exists a real risk of irreparable harm should the orders of the lower court continue to operate.
- 40. Accordingly and in the exercise of my discretion, guided by principles of justice, equity, and the preservation of the subject matter of the dispute,

I hereby order as follows:

- 1. An order of stay of the ruling and orders of Hon P. O. Ooko issued on 16.4.25 and all proceedings in Civil Suit Number MCELC E069 of 2024 is issued pending the hearing and determination of the appeal.
- 2. The appellants are granted injunctive relief restraining the respondents, whether by themselves, their agents, servants, or privies, from selling, charging, alienating or in any way interfering with the appellants’ possession of the property known as Ndumberi/ Riabai/T.413 pending the determination of the appeal.
- 3. The status quo in respect of the property in question shall be maintained until the appeal is finally determined, and no party shall take any action that alters, disposes of, or affects the property in a manner inconsistent with this order.
- 4. The costs of this application shall be abide the appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS 30TH DAY OF OCTOBER 2025.**

.....  
**J. M. ONYANGO**  
**JUDGE**

In the presence of:

- 1. Mr Juma for Mr. Njuguna for the Appellant



2. Mr Karithi for the Respondent

Court Assistant: Hinga

