



Mumia & 2 others v Koech & 4 others (Environment and Land Case 70 of 2018 & 352 of 2022 (Consolidated)) [2025] KEELC 7776 (KLR) (5 November 2025) (Ruling)

Neutral citation: [2025] KEELC 7776 (KLR)

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT KAKAMEGA
ENVIRONMENT AND LAND CASE 70 OF 2018 & 352 OF 2022 (CONSOLIDATED)
A NYUKURI, J
NOVEMBER 5, 2025

MUMIA & 2 OTHERS V KOECH & 4 OTHERS (ENVIRONMENT AND LAND CASE 70 OF 2018 & 352 OF 2022 (CONSOLIDATED)) [2025] KEELC 7776 (KLR) (5 NOVEMBER 2025)

BETWEEN

FRANCIS MASINDE MUMIA APPLICANT

AND

JOSEPH KOECH & 3 OTHERS & 3 OTHERS & 3 OTHERS RESPONDENT

AS CONSOLIDATED WITH

ENVIRONMENT AND LAND CASE 352 OF 2022

BETWEEN

DINAH C CHEPSIROR & ANOTHER & ANOTHER & ANOTHER PLAINTIFF

AND

FRANCIS MASINDE MUMIA DEFENDANT

RULING

1. Before court is a notice of motion dated 29th September 2025 filed by the plaintiff seeking a temporary injunction to restrain the respondents, their employees, servants, agents, assigns and any other person acting under their authority or instructions from selling, alienating, transferring and or doing anything that will interfere with the applicant's quiet enjoyment and possession of land parcel No. Kakamega Sango 131 pending hearing and determination of Civil Application No. E055 OF 2025 at the Court of Appeal. He also sought costs.



2. The application is anchored on the affidavit of the applicant sworn on 29th September 2025. The applicant's case is that he purchased the suit property 40 years ago and has lived thereon peacefully with his family. That he has filed application for extension of time at the Court of Appeal being Civil Application No. 55 of 2025 which is pending determination. That on the night of 26th September 2025, the respondents through their agents or people acting under their authority invaded the applicant's matrimonial home, destroyed crops thereon and demolished it. That the respondents intend to sell the suit property.
3. The application was opposed. The 2nd respondent filed a replying affidavit sworn on 14th October 2025. He stated that the application was misconceived and an abuse of the court process. That the applicant filed application dated 12 08 2025 seeking stay pending appeal which was dismissed. That the respondent sought eviction against the applicant which was allowed. That Eshikhoni Auctioneers carried out eviction against the applicant and that now the respondent is in possession of the suit property. That the application is res judicata as issues raised herein are similar to those raised in the application dated 12 08 2024 as the applicant sought both injunction and stay pending appeal which application was already determined. That this application is meant to frustrate the respondent.
4. The application was disposed by way of written submissions. On record are submissions filed by the applicant dated 10th February 2025 and those of the respondent dated 21st March 2025; both of which the court has duly considered.

Analysis and determination

5. The court has carefully considered the application, response thereto and the parties' written submissions. Two issues arise for this court's determination, namely;
 - a. Whether this application is res judicata in view of the decision made in regard to the application dated 12 08 2024; and
 - b. Whether the applicant deserves orders of temporary injunction pending hearing and determination of Civil Application No. 55 of 2025 at the Court of Appeal.
6. Section 7 of the *kenya act 1924 3 Civil Procedure Act* bars the court from trying an issue or suit already determined on merit with finality between the same parties by a competent court. The respondent herein argued that as this court has already determined the application dated 12 08 2024, which touched on similar prayers as those in the instant application, the instant application is res judicata. I have considered the application dated 12 08 2024 and it is clear that the only prayer made in that application was stay of execution pending appeal. In the instant application, the applicant sought temporary injunction. Injunction and stay of execution are not one and the same thing, and therefore the issues raised in the former application are not substantially and directly in issue in the instant application. In the premises, this court finds that the application herein is not res judicata.
7. On whether the applicant deserves a temporary injunction pending determination of his application for extension of time to file appeal before the Court of Appeal, this court has power to grant injunction before determination of the suit filed before it whether in the exercise of its original jurisdiction or its appellate jurisdiction as stipulated in Order 40 rule 1 and Order 42 Rule (6) of the Civil Procedure Rules, respectively which provide as follows;

Order 40 Rule 1 provides that;

Cases in which temporary injunction may be granted [Order 40, rule 1]

Where in any suit it is proved by affidavit or otherwise—



(a)	that any property in dispute in a suit is in danger of being wasted, damaged, or alienated by any party to the suit, or wrongfully sold in execution of a decree; or
(b)	that the defendant threatens or intends to remove or dispose of his property in circumstances affording reasonable probability that the plaintiff will or may be obstructed or delayed in the execution of any decree that may be passed against the defendant in the suit,

the court may by order grant a temporary injunction to restrain such act, or make such other order for the purpose of staying and preventing the wasting, damaging, alienation, sale, removal, or disposition of the property as the court thinks fit until the disposal of the suit or until further orders.

Order 42 Rule 6 (7) provides that;

Stay in case of appeal [Order 42, rule 6]



(1)	<p>No appeal or second appeal shall operate as a stay of execution or proceedings under a decree or order appealed from except in so far as the court appealed from may order but, the court appealed from may for sufficient cause order stay of execution of such decree or order, and whether the application for such stay shall have been granted or refused by the court appealed from, the court to which such appeal is preferred shall be at liberty, on application being made, to consider such application and to make such order thereon as may to it seem just, and any person aggrieved by an order of stay made by the court from whose decision the appeal is preferred may apply to the appellate court to have such order set aside.</p>
(2)	<p>No order for stay of execution shall be made under subrule (1) unless—</p> <p>TABLE</p> <p>TR</p> <p>TC{style width: 5%}</p> <p>(a)</p> <p>TC{colspan 2 style width: 94%}</p> <p>the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and</p> <p>TR</p> <p>TC{colspan 2 style width: 38%}</p> <p>(b)</p> <p>TC{colspan 2 style width: 61%}</p> <p>such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.</p>



TR

TC{style width: 5%}

(a)

TC{colspan 2|style width: 94%}

the court is satisfied that substantial loss may result to the applicant unless the order is made and that the application has been made without unreasonable delay; and

TR

TC{colspan 2|style width: 38%}

(b)

TC{colspan 2|style width: 61%}

such security as the court orders for the due performance of such decree or order as may ultimately be binding on him has been given by the applicant.

SUBPARA 3.

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SUBPARA 4.

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SUBPARA 5.

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Notwithstanding anything contained in subrule (1) of this rule the High Court shall have power in the exercise of its appellate jurisdiction to grant a temporary injunction on such terms as it thinks just provided the procedure for instituting an appeal from a subordinate court or tribunal has been complied with.”

8. Thus, this court has jurisdiction to grant injunction while exercising its original jurisdiction in a case where the suit is yet to be heard; and also, while exercising its appellate jurisdiction in regard to a decision from the subordinate court, before the appeal is heard. After deciding a suit on merit whether exercising original or appellate jurisdiction, thereafter, this court has no power to grant an injunction pending determination of any other matter before the Court of Appeal. Principles for grant of temporary injunction are well settled. The applicant must demonstrate prima facie case, irreparable loss and show that the balance of convenience tilts in favour of granting an injunction. (See *Giella v Cassman Brown* [1973] EA 358)
9. In this matter, this court has already conclusively determined the substantive issues raised by the parties. The court has disposed the suit and pronounced itself on the rights of the parties as expressed within its judgment whereof the court ordered the applicant’s eviction. It is not disputed that the applicant has already been evicted. Therefore, this court having determined the rights of parties substantively and conclusively upon hearing parties on merit, cannot revert to the issue of whether or not the applicant has a prima facie case. It is the Court of Appeal that can determine if the intended appeal raises triable issues with chances of success, but not this court.
10. In the premises, I find and hold that this court has no jurisdiction to grant injunction sought. Therefore, I hereby strike out the application dated 29th September 2025 with costs to the respondents.



11. It is so ordered.

DATED, SIGNED AND DELIVERED AT KAKAMEGA IN OPEN COURT VIRTUALLY THROUGH MICROSOFT TEAMS VIDEO CONFERENCING PLATFORM THIS 5TH DAY OF NOVEMBER 2025

A. NYUKURI

JUDGE

In the presence of;

Ms. Maiyo holding brief for Mr. Okara for the applicant

Ms. Chesoo for the respondents

Court Assistant- Delphine

