



REPUBLIC OF KENYA



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

**Vundi v Standard Chartered Bank Kenya Limited & another (Civil Application E545 of 2024) [2025] KECA 1830 (KLR) (7 November 2025) (Ruling)**

Neutral citation: [2025] KECA 1830 (KLR)

**REPUBLIC OF KENYA  
IN THE COURT OF APPEAL AT NAIROBI  
CIVIL APPLICATION E545 OF 2024  
SG KAIRU, AO MUCHELULE & J MOHAMMED, JJA  
NOVEMBER 7, 2025**

**BETWEEN**

**EVELYNE NZAMBI VUNDI ..... APPELLANT**

**AND**

**STANDARD CHARTERED BANK KENYA LIMITED ..... 1<sup>ST</sup> RESPONDENT**

**OASIS GREEN GROWERS COMPANY, LIMITED ..... 2<sup>ND</sup> RESPONDENT**

*(An application for interlocutory injunction pending hearing and determination of the application and the intended appeal against the ruling (F. Mugambi J.) dated 18th October 2024) in Nairobi HCCC No. E590 of 2023)*

**RULING**

**Background**

1. The dispute herein originated from a plaint filed by the applicant against the 1<sup>st</sup> and 2<sup>nd</sup> respondents before the High Court, Commercial & Tax Division, dated 30<sup>th</sup> November 2023, together with an application of even date seeking interim injunctive orders restraining the respondents from interfering with the suit property.
2. The suit property, registered in the name of the applicant, had been charged to the 1<sup>st</sup> respondent as security for a loan facility of USD500,000 advanced to the 2<sup>nd</sup> respondent. The applicant contended that she was not notified of any default by the 2<sup>nd</sup> respondent until 9<sup>th</sup> October 2023, when she received a 40-day Notification of Exercise of Statutory Power of Sale from the 1<sup>st</sup> respondent. She denied service of the ninety (90) days' Statutory Notice as required under section 90 of the *Land Act*, Cap 280.
3. The 1<sup>st</sup> respondent opposed the application, contending that all requisite demand notices, correspondences, and reminders were duly served upon both the applicant and the 2<sup>nd</sup> respondent. It maintained that the applicant was not entitled to the injunctive relief sought.



4. By a ruling delivered on 14<sup>th</sup> June 2024, the learned Judge held that the applicant had failed to establish a prima facie case warranting the grant of interlocutory injunctive relief. Having failed to satisfy the first principle, the Learned Judge declined to consider whether damages would be an adequate remedy or where the balance of convenience lay, and consequently dismissed the application with costs.
5. Aggrieved, the applicant filed an application dated 14<sup>th</sup> August 2024 seeking review and/or setting aside of the said ruling on the ground of an error apparent on the face of the record. She contended that the trial court had failed to appreciate that the Statutory Notices had been addressed solely to the 2<sup>nd</sup> respondent's postal and email addresses, and not to her. She denied receipt of any such notice in her email, reiterating that she was only served with the 40-day Statutory Notice. By a ruling dated 18<sup>th</sup> October 2024, the learned Judge dismissed the application for review with costs, finding it devoid of merit.
6. Further dissatisfied, the applicant lodged a Notice of Appeal dated 22<sup>nd</sup> October 2024 and contemporaneously filed an application under Rule 5(2)(b) of the Court of Appeal Rules seeking, inter alia:
  - a. An interlocutory injunction restraining the 1st respondent, its agents or assigns, from selling, transferring, or otherwise dealing with Land Reference No. 7413/23 pending the hearing and determination of the intended appeal.
  - b. A stay of proceedings in Nairobi High Court Commercial Case No. E590 of 2023 – Evelyne Nzambi Vundi v. Standard Chartered Bank & Oasis Green Growers Company Limited – pending the hearing and determination of the intended appeal.
  - c. Costs of the application.
7. The application was supported by the applicant's affidavit sworn on 22<sup>nd</sup> October 2024 and reiterated in a supplementary affidavit sworn on 11<sup>th</sup> November 2024. She averred that she had not been served with the ninety (90) days' Statutory Notice, and that she was neither a director nor Shareholder of the 2<sup>nd</sup> respondent. She contended that she had an arguable appeal and that if the suit property, being her matrimonial home, were sold, the intended appeal would be rendered nugatory.
8. The 2<sup>nd</sup> respondent, through its director, swore a supporting affidavit admitting default in servicing the loan facility but affirming that the applicant had indeed not been served with the statutory notice.
9. The 1<sup>st</sup> respondent opposed the application by a replying affidavit sworn on 29<sup>th</sup> October 2024. It contended that the applicant had failed to demonstrate the existence of an arguable appeal or that the intended appeal would be rendered nugatory. It further argued that the charged property was a commercial security, not immune from realization, and that the bank was financially capable of compensating the applicant by way of damages if her appeal ultimately succeeded.

### **Submissions by Counsel**

10. Counsel for the parties filed and highlighted written submissions. At the hearing of the application, Mr. Nick Omari, learned counsel for the applicant submitted, that the statutory notices were never served upon the applicant and that the trial court erred in finding otherwise. Mr Samuel Karanja, learned counsel for the 1st respondent countered that service upon the common address was sufficient and that the suit property, having been offered as security, was liable to sale notwithstanding its matrimonial character. There was no appearance by or for the 2<sup>nd</sup> respondent, despite service.



## Determination

11. We have considered the application, the affidavits, submissions, the authorities cited and the law. This Court reiterates that the jurisdiction under Rule 5(2)(b) is discretionary and is exercised upon satisfaction of two conjunctive principles:
  - i. that the intended appeal is arguable; and
  - ii. that unless the orders sought are granted, the appeal would be rendered nugatory.
12. In considering the twin principles set out above, we are cognizant that to benefit from the discretion of this Court, both limbs must be demonstrated to the Court's satisfaction.
13. On the first principle, as to whether or not the appeal is arguable, we have to consider whether there is a single bona fide arguable ground that has been raised by the applicant in order to warrant ventilation before this Court. See *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 others* [2013] eKLR where this Court described an arguable appeal in the following terms:
  - “vii). An arguable appeal is not one which must necessarily succeed, but one which ought to be argued fully before the court; one which is not frivolous.
  - viii). In considering an application brought under Rule 5 (2) (b) the court must not make definitive or final findings of either fact or law at that stage as doing so may embarrass the ultimate hearing of the main appeal.”
14. We have considered the grounds set out in the motion and the draft memorandum of appeal. In our view it is arguable *inter alia* whether the ninety (90) days' Statutory Notice was duly served upon the applicant. An arguable point is not necessarily one that must succeed, but merely one that is deserving of consideration by the Court. Without saying more lest we embarrass the bench that will be seized of the main appeal, we are satisfied that the intended appeal is arguable.
15. On the nugatory aspect, which is whether the appeal, should it succeed, would be rendered nugatory if we decline to grant the orders sought and the intended appeal succeeds, in *Stanley Kang'ethe Kinyanjui v Tony Ketter & 5 Others* (*supra*) this Court stated that:
  - “ix) The term “nugatory” has to be given its full meaning. It does not only mean worthless, futile or invalid. It also means trifling.
  - x) Whether or not an appeal will be rendered nugatory depends on whether or not what is sought to be stayed if allowed to happen is reversible; or if it is not reversible whether damages will reasonably compensate the party aggrieved”.
16. In determining whether or not an appeal will be rendered nugatory, the Court has to consider the conflicting claims of both parties and each case has to be determined on its merits. In the instant application, we note from the record and submissions by counsel for the respondent and which was not disproved by counsel for the applicant that the suit property, although matrimonial, was validly offered as security for a commercial facility. In the event the intended appeal succeeds, damages would constitute adequate remedy, and the 1<sup>st</sup> respondent, being a reputable financial institution could compensate the applicant by way of damages if the appeal succeeds.



17. This Court in Integrated Wood Complex Ltd & another V Kenya National Corporation Ltd [2005] eKLR stated as follows:

“In dealing with the issue whether or not success in the intended appeal will be rendered nugatory if stay is not granted, we consider the fact that the respondent is an established financial institution and would have no difficulty if required to pay back the full decretal amount.”

In the circumstances, we find that the intended appeal will not be rendered nugatory if stay is not granted and the appeal succeeds.

18. From the circumstances of the application before us, the applicant has failed to demonstrate the existence of both limbs as required by Rule 5(2)(b) of this Court’s Rules and in accordance with the jurisprudence underlying the consideration of the twin principles summarized by this Court in Stanley Kangethe Kinyanjui v Tony Ketter & 5 others (supra). The upshot is that we decline to grant the orders sought pending the hearing and determination of the appeal. The application dated 22<sup>nd</sup> October 2024 is accordingly dismissed with costs to the 1<sup>st</sup> respondent.

19. Orders accordingly.

**DATED AND DELIVERED AT NAIROBI THIS 7<sup>TH</sup> DAY OF NOVEMBER, 2025**

**S. GATEMBU KAIRU, C.Arb, FCIArb**

.....

**JUDGE OF APPEAL**

**JAMILA MOHAMMED**

.....

**JUDGE OF APPEAL**

**A.O. MUCHELULE**

.....

**JUDGE OF APPEAL**

I certify that this is a true copy of the original

Signed

**DEPUTY REGISTRAR**

