



REPUBLIC OF KENYA



**Njoroge v Mwangandi (Environment and Land Appeal E026 of 2025)  
[2025] KEELC 7837 (KLR) (12 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 7837 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT MALINDI  
ENVIRONMENT AND LAND APPEAL E026 OF 2025  
FM NJOROGE, J  
NOVEMBER 12, 2025**

**BETWEEN**

**TONY NJOROGE ..... APPLICANT**

**AND**

**MUKOMBE SAID MWAGANDI ..... RESPONDENT**

**RULING**

1. Vide a notice of motion application dated 12/5/2025 premised under the provisions of Section 1A, 1B and 3A of the Civil Procedure Act, Order 10 Rule 6 and 11 and Order 22 Rule 22 of the Civil Procedure Rules, the Respondent/applicant seeks:
  1. ....Spent
  2. That the honourable court be pleased to set aside or vacate the interim injunctive orders issued on 7/5/2025 which granted stay orders of stay of execution of the ruling delivered on 25/2/2025 and all consequential orders issued pursuant thereto and the proceedings therein pending the hearing and determination of this application
  3. Costs be provided for.
2. The application is based on the grounds set out in the supporting affidavit of the Respondent/applicant sworn on an even date. The Applicant avers that following the ruling delivered on 25/2/2025, the Respondent served a Notice of Appeal dated 26/2/2025, which was, however, not filed in the Kilifi Magistrate's Court.
3. It is further deponed that the Respondent previously filed an application under certificate of urgency in ELC No. E024 of 2025, seeking similar reliefs, but the said application was declined by the Court. The Applicant contends that the current application is substantially a replica of the earlier application



in ELC No. E024 of 2025, save that it now includes a prayer for leave to appeal out of time. The said ELC matter is still pending before Honourable Justice Makori.

4. The Applicant argues that the filing of multiple applications before different courts involving the same parties and similar issues amounts to an abuse of court process and is prejudicial to him. He urges the Court to vacate the interim orders on grounds that they are denying him the right to enjoy property he lawfully acquired, and that it is in the interest of justice to bring the matter to finality.
5. On 11/6/2025 the court directed the Applicant to serve the application upon the Respondent by the close of business, and upon such service, the Respondent to file a response within seven days. Further, the court directed the Applicant to file written submissions within 14 days of service of the response, and the Respondent to file his submissions within 14 days of service of the other party's submissions.
6. I have perused the Court Tracking System (CTS), and found that there is no response filed. Similarly, neither party filed submissions as directed. There is equally no evidence that the respondent was served with the application.
7. The foregoing notwithstanding, this court, having perused the application dated 12/5/2025 and the application dated 2/5/2025 finds that the applicant's claim is that there is an existing suit in which a similar application such as that dated 2/5/2025 has been filed, being Malindi ELC No. E024 of 2025. The respondent's replying affidavit to the application dated 2/5/2025 states as much under oath and the statements therein have not been controverted.
8. The copy of application dated 21/3/2025 filed in Malindi ELC No. E024 of 2025 sought orders of stay of execution of ruling delivered on 25<sup>th</sup> February 2025 and all consequential orders issued pursuant thereto and the proceedings therein pending hearing and determination of that suit; it also sought a prohibition order to the Land Registrar Mombasa from transferring, dealing and or transacting on the suit property 204/III/MN(CR.4228) pending the hearing and determination of this suit and that court be pleased to set aside the ex-parte judgment and proceedings in Kilifi CMC ELC E002 of 2021.
9. In contrast the application dated 2/5/2025 seeks stay of execution of substantially the same orders addressed above, but only pending the hearing and determination of an intended appeal. Of the greatest importance is the fact that it also seeks leave that the applicant be granted leave to appeal out of time. The main purpose of the application dated 2/5/2025 is therefore to facilitate an appeal.
10. From the prayers in the plaint dated 21/3/2025 in Malindi ELC No. E024 of 2025 this court notes that there is a provisional title that is sought to be cancelled intimating that execution, though not expressly admitted, has already occurred. It also notes that the main prayers in the plaint in Malindi ELC No. E024 of 2025 relate to the setting aside of the proceedings and judgment in the lower court case, in contrast to the application dated 2/5/2025 which seeks to appeal against the ruling made by the hon magistrate reinstating the judgment. It appears therefore that the suit as filed, and the appeal as intended, deal with different subjects. It is not for this court to try and reconcile the two sets of proceedings at the present moment when it is faced with only an application for extension of time to appeal.
11. It is apparent then that even in the face of the fact that prayers for stay of execution may have been overtaken by events by now, this court is still able to determine the prayer for leave to file an appeal out of time.
12. Regarding the merits of the application for leave to appeal out of time, the impugned ruling was delivered on 25/2/2025. The application for leave was filed on 6/5/2025. It is noteworthy that the applicant in the application dated 2/5/2025 was not idle between 25/2/2025 and 2/5/2025. On the basis of legal advice given, and he can not be faulted for that he filed a suit namely, Malindi ELC No.



E024 of 2025 in late March 2025. On further legal advice he filed the application dated 2/5/2025 for leave to appeal out of time on 6/5/2025, being one of the two applications subject of this ruling. In the circumstances this court finds that the delay in bringing the present application was predicated on the legal advice that he received and it is therefore not inordinate.

13. Regarding the merits of the proposed appeal, this court has perused the draft memorandum of appeal attached to the application and found that the appeal is arguable. In stating that he has an arguable appeal, this court points out that it is not necessarily one that must succeed, but one that raises a triable issue for consideration by the appellate court.
14. In the circumstances above this court finds that prayer no 2 in the application dated 2/5/2025 ought to be allowed.
15. The application dated 12/5/2025 is allowed in terms of prayer no 2 thereof only to the extent that the positive injunctive orders granted on 7/5/2025 are vacated. However, in view of the fact that leave to appeal has been found to be merited as herein above, and this court's observation regarding the existence of the provisional title as above, this court also orders that the status quo of the suit land on the ground and of its title register shall be respected and maintained by all parties pending the hearing and determination of the intended appeal.
16. Regarding the procedural aspects, this court notes that the application was issued with an Appeal number ELCLA instead of ELCLMISC. The assigning of an ELCLA number may have been contributed to by the advocate's inclusion of a title intimating that it was an appeal, but the prayers in the application being clear that leave was being sought to file an appeal, it is not obvious that this classification should be blamed purely on counsel. In fact, it remains that what has been attached to the application is simply a "draft memorandum of appeal". Given that aspect, it should not have been assigned an ELCLA number at all had the contents of the prayers and the labelling of the annexure been considered. Further, even if this court were to dismiss the application on that technical irregularity alone, the effect may be to saddle itself and the parties with yet another similar application properly intitled later on. Consequently, this court opts to, and hereby does, deem the application dated 2/5/2025 to be a miscellaneous application despite the intitlement and hereby grants prayer no 2 thereof.
17. The applicant in the application dated 2/5/2025 shall file and serve a memorandum of appeal afresh in its own appeal file within 14 days of this order. Further, in view of the time lapse since the filing of the application, the record of appeal shall be filed and served strictly within 45 days of this order. This file shall be marked as closed.

**DATED, SIGNED AND DELIVERED AT MALINDI ON THIS 12<sup>TH</sup> DAY OF NOVEMBER, 2025.**

**MWANGI NJOROGE**

**JUDGE, ELC, MALINDI.**

