

REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT MALINDI
ELCLAPPEAL NO. E015 OF 2025

ABDILLE HASSAN DUWALE & OTHERS
APPELLANTS/APPLICANTS

VERSUS

BUNGALE WALEA MUUNGANO GROUP & ANOTHER
RESPONDENTS

RULING

1. The Appellant’s Notice of Motion application dated 20th March 2025 and the Respondent’s Notice of Motion dated 14th April 2025 have come up for determination before this Court.
2. The application dated 20th March 2025 is seeking the following orders:
 - a. Pending the hearing and determination of this application inter partes there be a stay of execution of the judgment delivered on 11th March 2025 and all consequential orders flowing therefrom.
 - b. There be a stay of the ruling delivered on 11th March 2025 and all consequential orders until the full hearing and final determination of the appeal the same being Malindi Number E 015 Of 2025
 - c. Costs of the application be provided for.
3. The application is supported by the sworn affidavit of the 2nd appellant. The grounds on which the application is made are that judgment was passed in Kilifi Land Case Number 23 Of 2024 Bungale Walea Muungano Group & another versus Suleiman Abdilleh and another on 11th March 2025. In the judgment, the appellants were ordered to remove all their livestock from the suit land within **45** days from the date of judgment. The appellants being dissatisfied have preferred an appeal, and so as not to

render their bill nugatory, an order of stay of execution of the trial courts judgment is necessary.

4. The other hand the application dated 14th April 2025 is seeking the following orders:

- a. That this court be pleased to stay execution of the order issued on 25th March 2025 pending hearing and determination of this application *inter partes*
- b. That this court be further pleased to order that this matter be heard and determined on priority basis going to the urgency of this matter as the appellants' are doing massive destruction of the suit property by burning the respondent's homes, destroying their farms and farm products and injuring the respondents on the pretext of the order issued by this court on 25th March 2025;
- c. That this court be pleased to strike out the application dated 20th March 2025 for being frivolous vexatious, scandalous and mischievous, brought by way of deceit and based on forged documents with an intent to stay on the suit property owned by the respondents unlawfully pending hearing and determination the appeal;
- d. That the costs of this application be provided for.

5. That latter application is supported by the sworn affidavit of Karisa Kaingu Mitsanze and Said Tsofa Mweni. The grounds for the application are that the respondents and the appellants entered into a lease on 25th July 2023. The appellant failed to comply with the conditions of the lease and caused serious losses to the response and their community which led to the termination of the lease. The lease was terminated vide notice. The respondents filed **ELC E063 OF 2024** on 3rd May 2024 seeking injunctive orders against the appellants which was certified urgent. The appellants entered appearance in that suit. They admitted being parties to the leases with the respondents in the replies filed before that court. In a ruling delivered on 25th June 2024 in that case, the court ordered the appellants

here in not to trespass on the suit land and to stop illegal grazing on it. The respondents hearing commenced execution thereof by serving the order on the Assistant County Commissioner, Bamba Division. The appellant preferred an appeal, being appeal No. 026 of 2024 and sought to stay and set aside the ruling and order. The High Court upheld the lower Court and declined to stay or set aside the injunctive orders against the appellant; that the Assistant County Commissioner Bamba Division was ordered by Court to remove the appellants from the suit land and in the process was compromised by the appellants thus forcing the respondents to file an application against their assistant county commissioner seeking to cite him for contempt of Court. The Assistant County Commissioner was found in contempt; that the appellant filed a fresh suit at Kaloleni Lawcourts CMCC Number E022 of 2024 raising the same issues raised in E063 of 2024; that the lease agreement relied on by the appellants in that case was the same lease that was relied on in the Kilifi case. The cause of action was the same in both cases. So were the annexures, the suit property and the parties. The respondent filed a response and the demonstrated that the suit was *sub judice*. However, the court granted an injunction on the same land that had been adjudicated in the Kilifi case. Based on that ruling the appellant moved their livestock into the suit property, destroyed the respondent's farmlands and farm produce, community farms, water pumps, and property which led to bloody skirmishes and resultant criminal cases. The

respondents filed an appeal against the ruling issued by the Kaloleni Court and the order of the Kaloleni Court was stayed. Kilifi E063 of 2024 was finally heard and judgment delivered requiring the appellants to vacate the suit land; that upon issuance of the judgement the appellants started the process of vacating the suit land until this appeal was filed and an order was issued by this court staying the judgment of the court in the Kilifi Case. However, different leases not relied on by the appellants in the previous litigations were presented before this court. These new leases are termed as forgeries by the respondents, calculated at lengthening the appellants' stay on the suit land; that immediately this court issued the orders of stay of execution the appellants who were moving out of the premises brought their livestock back into the premises and occasioned damage the respondents' farmland and other property as well as more bloodshed.

6. The two applications were disposed of by way of written submissions which I have read and considered.


DISPOSAL

7. There is an overarching complaint in this appeal that the appellants are abusing the process of the court to lengthen their stay on the suit premises. Of great concern is the allegation that the appellants have used different leases from those ones relied on in the litigation before the lower courts to secure orders in their favour in this court.

8. This is a matter involving large tracts of land and numerous people's livelihoods as well as risk of skirmishes and loss of precious life under the pretext that this or that order has been issued by this or that court. There is likelihood that someone, and it can not be told who at the moment, is hiding among the foliage of confusing filings in all these proceedings. It is improper in such circumstances to embark on an interlocutory quest for who is to blame for the mess. Now that the matter has reached this court in the form of an appeal, the need to bring the dispute to an end is more urgent than before.
9. Scrutinizing the two opposing applications and submissions has convinced this court that only a final determination on the appeal would aid the parties to reach a resolution. It will not be proper to begin trying the appeal piecemeal by way of cherry picking issues, for example, whether the leases exhibited in this appeal have ever been used in the previous litigation, or their manner of procurement, etc.
10. I therefore dispose of both the Appellant's Notice of Motion application dated 20th March 2025 and the Respondent's Notice of Motion dated 14th April 2025 as follows:
 - a. **The two applications are marked as dispensed with in favour of an expeditious conclusion of the appeal herein on its merits;**
 - b. **The appellants shall file and serve their record of appeal and their written submissions urging the appeal and shall provide the court and the respondents with physical copies thereof within 7 days of the date hereof in default of which the orders issued by this court on 26th March 2025 shall lapse and the present appeal shall automatically stand dismissed for want of compliance;**

- c. The respondents shall file and serve their submissions in response within 7 days of a physical record of appeal upon them as well as the appellant's submissions as ordered in (b) above;
- d. The costs of the two applications shall be in the cause;
- e. The appeal shall be mentioned on 17th December 2025.

Dated, signed and delivered at Malindi on this 25th day of November, 2025.

A rectangular box containing a handwritten signature in blue ink, which appears to read 'Mwangi Njoroge'.

**MWANGI NJOROGE
JUDGE, ELC, MALINDI.**