



**Ramadhan (Suing as the Legal Representative of the Estate of Jatane Nawe – Deceased) v Mpoke & 2 others (Environment and Land Appeal E013 of 2024) [2025] KEELC 8132 (KLR) (20 November 2025) (Ruling)**

Neutral citation: [2025] KEELC 8132 (KLR)

**REPUBLIC OF KENYA  
IN THE ENVIRONMENT AND LAND COURT AT KAJIADO  
ENVIRONMENT AND LAND APPEAL E013 OF 2024  
LC KOMINGOI, J  
NOVEMBER 20, 2025**

**BETWEEN**

**ASHA RAMADHAN ..... APPELLANT  
SUING AS THE LEGAL REPRESENTATIVE OF THE ESTATE OF JATANE  
NAWE – DECEASED**

**AND**

**LEINA MPOKE ..... 1<sup>ST</sup> RESPONDENT  
NATIONAL LAND COMMISSION ..... 2<sup>ND</sup> RESPONDENT  
ATTORNEY GENERAL ..... 3<sup>RD</sup> RESPONDENT**

**RULING**

1. This is the Ruling in respect of the Notice of Motion dated 15<sup>th</sup> October 2025 brought Pursuant to Article 159 of *the Constitution*, Section 1A, 1B, 3A, AND 63 of the Civil Procedure Rules, Section 5 of the Environment and Land Court Rules, Order 40 Rule 1, Order 51 Rule 1 of the Civil Procedure Rules and all Enabling Provisions of the Law.
2. It seeks orders;
  1. Spent.
  2. That the 1<sup>st</sup> respondent herein, his agents and/or servants be restrained from leasing, trespassing, disposing off, charging and/or in any other ways dealing with Plot No. 121/ Kajiado Township pending the hearing and determination of this appeal.
  3. Spent.
  4. That the cost of the application be provided for.



3. The grounds are on the face of the Application and are set out in paragraphs 1 to 6.
4. The Application is supported by the Affidavit of Asha Ramadhan, the Appellant herein, sworn on the 15<sup>th</sup> October 2024.
5. The Application is opposed.  
There is a Replying Affidavit sworn by Leina Mpoke, the 1<sup>st</sup> Respondent herein, sworn on the 13<sup>th</sup> January 2025.
6. On the 27<sup>th</sup> December 2025, the court with the consent of the parties, directed that the Notice of Motion be canvassed by way of written submissions.
7. The Appellant's/Applicant's submissions are dated 30<sup>th</sup> September 2025. They raise two issues for determination;
  - i. Whether the Appellant/Applicant has met the criteria for the grant of the order of temporary injunction pending the hearing and determination of the Appeal?
  - ii. Who shall bear the costs of the application?
8. Counsel submitted that the guiding principles for grant of temporary injunction are well settled and aptly set out in the case of Giella Vs. Cassman Brown (1973) EA 358 which was quoted with approval in Stanley Anyamba Ageyo & Another Vs. Musa Matu Riunga & 5 Others (2022) eKLR.
9. It is also submitted that the Appellant is the Administrator of the Estate of the late Jatane Nawe who is the lawful owner of Plot No. 121/Kajiado Township also known as Plot No. 275/Township.  
Reliance is placed on the case of showind Industries Vs. Guardian Bank Limited & Another (2002) eKLR .
10. It is further submitted that the Appellant's case is a strong and straight forward one. She has been denied the right to property hence she has suffered and continues to suffer unquantifiable injury which damages cannot adequately compensate.  
He has put forward the case of Joseph Siro Mosioma Vs. Housing Finance Company of Kenya Limited & 3 Others (2008) eKLR.
11. It is also submitted that the 1<sup>st</sup> Respondent may sell the suit property which will greatly inconvenience the Appellant. He has put forward the cases of Pius Kipchirchir Kogo Vs. Franck Kimeli Tenai (2018) eKLR; Paul Gitonga Wanjau Vs. Gathuti Tea Factory Company Limited & 2 Others (2016) eKLR.
12. It is submitted that the Appellant stands to suffer greater harm from the outcome if the orders are not granted as she is the lawful owner of the suit property.  
She prays that the Application be allowed.
13. The 1<sup>st</sup> Respondent's submissions are dated 21<sup>st</sup> October 2025. They raise three issues for determination;
  - a. Whether the Applicant has satisfied the conditions for the grant of injunction and/or stay of execution pending Appeal under Order 42 Rule 6 of the Civil Procedure Rules, 2010.
  - b. Whether the reliance on Order 40 of the Civil Procedure Rules on injunction is misplaced in an appellate application for stay.



- c. Whether the Applicant has met the threshold for grant of injunction under Order 40 of the Civil Procedure Rules.
14. Counsel submitted that the Appellant has not demonstrated that she stands to suffer any substantial loss if the orders sought are not granted. That mere assertion that the 1<sup>st</sup> Respondent intends to lease the suit property to a third party is unsubstantiated and speculative. Reliance placed on the cases of Kenya Shell Limited Vs. Benjamin Karuga Kibiru & Another (1986) KECA 94 (KLR); Machira t/a Machira & Co. Advocates Vs. East African standard (2002) KEHC 1167 (KLR).
15. It is also submitted that the Appellant has not established the nexus between Plot No. 275 Township (B860) and Plot No. 121/ Kajiado Township) the subject of this appeal to warrant the intervention. Reliance is placed on the case of Nguruman Limited Vs. Jan Bonde Nielsen & 2 Others (2014) KECA 606 (KLR).
16. It is also submitted that the Application has been brought after a long delay. No reasonable explanation has been given.
- Reliance is placed on the case of Gianfranco Manenthi & Another Vs. Africa Merchant Assurance Company Limited (2019) KEHC 7586 (KLR).
17. It is submitted that the Appellant has not offered any form of security hence this omission is fatal to the Application.
- She has put forward the cases of James Wangalwa & Another Vs. Agnes Naliaka Cheseto (2012) KEHC 1094 (KLR); Building (K) Limited Vs. Ogolo (2025) KEHC 4757 (KLR).
18. It is submitted that the Appellant has not demonstrated that the 1<sup>st</sup> Respondent is engaging in any conduct that threatens to render the appeal nugatory. Further that the conditions set out in the Giella Case have not been satisfied.
19. It is also submitted that the balance of convenience tilts in favour of the 1<sup>st</sup> Respondent who lawfully owns and occupies Plot No. 275/Township (B860).
- He prays that the Application be dismissed with costs.
20. I have considered the Notice of Motion, the Affidavit in support, the response thereto, the rival submissions and the authorities cited. The issues for determination are;
- i. Whether orders of temporary injunction ought to be issued pending appeal.
  - ii. Who should bear costs of the application?
21. In the case of Patricia Njeru & 3 Others Vs. National Museums of Kenya (2004) eKLR the Court gave the following the principles as governing grant of temporary injunction pending appeal;
- a) An order of injunction pending appeal is a discretionary one which will not be exercised against an applicant whose appeal is frivolous.
  - b) The discretion should be refused where it would inflict great hardship than it would avoid.
  - c) The Applicant must show that to refuse the injunction would render the appeal nugatory.



d) The court should also be guided by the principles of Giella Vs. Cassman Brown (1973) EA 358.”

22. I am guided by the above authority in finding that the Appellant has failed to demonstrate that the Appeal will be rendered nugatory if these orders are not granted.
23. I also find that the conditions set out in the Giella Case have not been satisfied.
24. In conclusion I find no merit in this application and the same is dismissed. The costs shall abide the outcome of the Appeal.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT KAJIADO THIS 20<sup>TH</sup> DAY OF NOVEMBER 2025.**

**L.KOMINGOI**

**JUDGE**

In the Presence of:

Mr. Orimba for Mr. Paul Mwangi for the Appellant.

Ms. Minik for Mr. Sankale for the 1<sup>st</sup> Respondent.

N/A for the 2<sup>nd</sup>, 3<sup>rd</sup> Respondents.

Court Assistant – Peter.

