

**IN THE COURT OF
APPEAL AT
NAIROBI**

(CORAM: MUSINGA (P), GATEMBU & JOEL NGUGI, JJ.A.)

**CIVIL APPLICATION NO. NAI E273 OF
2025**

BETWEEN

REUBEN NJUGUNA WAWERU.....APPLICANT

AND

MATUMAINI VENTURES LIMITED.....1ST RESPONDENT
KENYA COMMERCIAL BANK LIMITED 2ND
RESPONDENT GACHIRI KARIUKI & KIAI ADVOCATES 3RD
RESPONDENT
JASON EDWARD WANJHIA
T/A NINJAH ENTERPRISES 4TH
RESPONDENT BMW PRECAST HOUSING
DEVELOPMENT LTD 5TH
RESPONDENT
REGISTRAR OF TITLES, NAIROBI.....6TH
RESPONDENT JAMII BORA BANK LIMITED 7TH
RESPONDENT GERALD KIJOGI RUKARIA....8TH
RESPONDENT
GERALD KIMATHI MAINGI.....9TH RESPONDENT
NOMAN MUTUMA.....10TH RESPONDENT
MICAL ONYWERA.....11TH RESPONDENT
NANCY KAPSOOT.....12TH RESPONDENT
EVERLYNE CHEBET SANG.....13TH RESPONDENT
BENEDICT KIAMBI RUURI 14TH
RESPONDENT
FRANCIS KIGUNDA IKIARA.....15TH
RESPONDENT GIDEON MURITHI MUGUNA 16TH
RESPONDENT JAMES NTEERE KUNGANIA 17TH
RESPONDENT FREDRICK BUNDI RARIA 18TH
RESPONDENT
PATRICK OCHIENG NYAOKE 19TH
RESPONDENT
EPHANTUS KITHINJI MUTHOMI 20TH

RESPONDENT

SMITH MUTURI.....21ST RESPONDENT

CHARLES MAINA MBURU.....22ND

RESPONDENT

*(Being an application for injunction pending hearing and determination of Civil Appeal Nos. E648 and E753 of 2024 arising from the Judgment of the Environment and Land Court of Kenya at Machakos (**Angote, J.**) delivered on 28th September 2023*

In

ELC Case No. 58 of 2008

****** RULING OF THE**

COURT

1. The applicant's notice of motion dated 30th April 2025 seeks a temporary injunction to restrain the 5th and 7th respondents from advertising for sale and/or selling, whether by public auction or private treaty, transferring, charging or in any manner whatsoever interfering with the registered ownership of title to the parcel of land known as **LR. 15324**, hereinafter referred to as the **suit property**.
2. In his affidavit in support of the application, the applicant states, *inter alia*, that in 2008 the 8th to 22nd respondents and himself filed a suit in the **Environment and Land Court (ELC) at Machakos, ELC No. 58 of 2008**, claiming ownership of the suit property by virtue of purchase from the 1st and 2nd respondents; that on 28th September 2023, the trial court (**Angote, J.**) dismissed the suit with costs; that the applicant together with the 8th to 22nd respondents have since filed appeals before this Court, being Civil Appeal No. E648 of 2024 and E753 of 2024; that the two appeals are arguable as demonstrated by an annexed memorandum of appeal; and

that the suit property is currently

registered in the name of the 5th respondent, who has charged it to the 7th respondent to secure a sum of USD 1,100,000.

3. The applicant is apprehensive that the 5th and 7th respondents will transfer the suit property to third parties before the appeals are heard and determined, unless restrained by this Court. He highlights several attempts made by the said respondents to dispose of the suit property.
4. In his view, the 5th and 7th respondents will not suffer any prejudice if the orders sought are granted, while on the other hand, if the suit property is sold before the appeals are heard and determined, in the event that the appeals succeed when the suit property has already been disposed of, it will render the appeals nugatory. The suit property is said to be prime land valued at over Kshs. 265 million, which is almost twice the USD 1,100,000 secured by the suit property. The applicant, therefore, urges this Court to grant the orders sought.
5. In response to the application, only the 2nd, 5th, 7th, and 8th to 22nd respondents filed replying affidavits and submissions. The rest of the respondents did not participate in these proceedings.
6. The 2nd respondent (**Kenya Commercial Bank Limited**), opposed the application. In a replying affidavit sworn by **Lilian Sogo**, the Head Counsel, litigation, the 2nd respondent stated,

inter alia, that

the suit that gave rise to this application was dismissed on 23rd September 2023; that the trial court held that the 2nd respondent had no contractual obligation with the plaintiffs, including the applicant herein; that the applicant seeks orders against the 2nd and 5th respondents only; that the two appeals are not arguable as against the 2nd respondent as the appeals relate to a contract entered between the applicant and the 1st respondent, to which the 2nd respondent is not privy; that there was inordinate delay on the part of the applicant in seeking this Court's intervention, and in the circumstances, the application ought to be dismissed with costs.

7. The 5th respondent also opposed the application. In its replying affidavit sworn by **Liu We Jun**, one of its directors, he stated, *inter alia*, that the 5th respondent has not, at any time, directly or indirectly, been involved in any of the alleged acts or omissions complained of by the applicant, nor has any specific wrong doing been pleaded or demonstrated against it; that the inclusion of the 5th respondent is therefore unjustified as there is no material disclosing any contractual or fiduciary relationship between the applicant and the 5th respondent to warrant any orders against the 5th respondent, and for those reasons urged us to dismiss the application.

8. The 7th respondent opposed the application and filed a replying affidavit that was sworn by **Jackson Kimathi**, the Legal Manager of Kingdom Bank, the successor in title to Jamii Bora Bank Ltd, in which he depones, *inter alia*, that the application is devoid of merit and has been made following a period of inordinate and unexplainable delay since the trial court's judgment was delivered on 28th September 2023; that over a period of more than 6 months, the applicant as well as the 8th to 21st respondents did not seek any stay of execution of the impugned judgment; that the 2nd and 7th respondents filed their respective bill of costs dated 26th August 2024 and 6th September 2024 and that is what prompted the applicant as well as the 8th to 21st respondents to file two applications seeking stay of the taxation proceedings pending hearing and determination of their appeals and an order of injunction to restrain the 1st and 7th respondents from disposing of the suit property; and that the two applications were heard and dismissed on 26th February 2025.
9. The 7th respondent further stated that the current application is merely calculated to frustrate the 7th respondent's effort to realise the fruits of litigation, given that it was filed over a year after the trial court delivered its judgment, and close to three months after the trial court dismissed the two applications

aforesaid.

10. The 7th respondent further stated that the two appeals are not arguable, and the appeals will not be rendered nugatory if the orders sought are not granted because the appellants can be adequately compensated in damages if the appeals are successful, the 7th respondent being a reputable financial institution. However, in the event that this Court is inclined to grant the orders sought, the 7th respondent urged us to order the applicant to deposit a sum of Kshs. 320 million in a joint interest-earning account in the names of the applicant, the 8th to 21st respondents and the 7th respondents' advocates as security.
11. The 8th to 22nd respondents supported the application and filed a replying affidavit sworn by the 8th respondent, for and on behalf of all of them. The contents of the affidavit largely mirror that of the applicant, and we shall therefore not regurgitate the same.
12. At the hearing of the application, **Mr. Masila** appeared for the applicant, **Ms. Cheruiyot** for the 2nd respondent, **Mr. Eredi** for the 5th respondent, **Mr. Dachi** for the 7th respondent, and **Ms. Lina Moraa** for the 8th to 22nd respondents. Counsel highlighted their respective submissions, but we shall not rehash them as they largely reiterate the issues contained in their respective affidavits.

13. In an application made under rule 5(2)(b) of this Court's Rules, an applicant has to demonstrate that the appeal or intended appeal is arguable, and that unless the Court grants the orders sought, the appeal, if successful, shall be rendered nugatory.

See Trust

Bank Limited & Another vs Investech Bank Limited & 3

Others [2000] eKLR.

14. In the impugned judgment, the trial court held that the 2nd respondent was not a party to the contract of sale of the suit property executed between the applicant and the 1st respondent; that the 2nd respondent had no legal interest or proprietary rights in the suit property that the transfer of the suit property from the 2nd to the 4th respondent and subsequently to the 5th respondent was conducted lawfully and that the applicant had no *locus standi* to question the transfer of the suit land from the 2nd respondent to the 4th respondent and subsequently to the 5th respondent.

15. On the record before us, it is doubtful whether the appeals are arguable as against the 2nd, 4th and 5th respondents based on the doctrine of privity. Likewise, we do not think that the appeals as against the 7th respondent, to whom the suit property was lawfully charged to secure a sum of USD 1,100,000 is arguable. The 7th respondent is lawfully pursuing

recovery of the outstanding loan balance as against the applicant and the 8th to 22nd respondents.

16. But even if we were to hold that the appeals are arguable, we are not satisfied that they would be rendered nugatory if the orders sought are not granted. The current market value of the suit property is known, and has been stated to be Kshs. 265 million. It may also be valued before any sale is conducted, and the 7th respondent, being a reputable commercial bank, is in a position to compensate the appellants for any loss that they may suffer as a result of the sale in the event that the appeals are successful.
17. Consequently, we find this application unmeritorious and dismiss it with costs to the 2nd, 5th and 7th respondents.

Dated and delivered at Nairobi this 21st day of November 2025.

D. K. MUSINGA, (PRESIDENT)

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JUDGE OF APPEAL

S. GATEMBU KAIRU, FCIArb, C.Arb.

.....

JUDGE OF

APPEAL JOEL

NGUGI

.....

JUDGE OF APPEAL

*I certify that this is
a true copy of the
original.*

Signed

DEPUTY REGISTRAR.