

**IN THE COURT OF  
APPEAL AT NYERI**

**(CORAM: KANTAI, LESIIT & ALI-ARONI, JJ.A.)**

**CIVIL APPEAL (APPLICATION) NO. E189 OF**

**2024 BETWEEN**

**GOSPEL OUTREACH CHURCH  
GAKAWA HOPE CHRISTIAN WORSHIP CENTER...1<sup>ST</sup> APPLICANT**

**PASTOR IN CHARGE  
GOSPEL OUTREACH CHURCH GAKAWA.....2<sup>ND</sup>  
APPLICANT**

**AND**

**MWANGI KIMINDA.....1<sup>ST</sup> RESPONDENT**

**LUCY WANGARI MWANGI.....2<sup>ND</sup>  
RESPONDENT**

*(An application for an injunction pending the appeal from the Judgment of the Environment and Land Court at Nyeri (Olola, J.) delivered on 20<sup>th</sup> September 2015*

***in***

***ELC Case No. 3 of 2015)***

***\*\*\*\*\****

**RULING OF THE COURT**

1. Before the court is an application by way of a notice of motion dated 29<sup>th</sup> October 2024, brought under **rules 5, 43, and 49 of the Court of Appeal Rules 2022**, amongst other statutes, seeking for a temporary injunction restraining the respondents, alongside their agents, servants, employees, or anyone claiming under them, from selling, subdividing,

entering, trespassing upon, demolishing, alienating, wasting,  
or otherwise interfering

with the building constructed on the joint parcels of land designated as L.R. NO. GAKAWA/KAHURURA BLOCK 1/ICHUGA/1302

(referred to as the "suit property") & 1303 until the appeal is heard and fully determined; an order for the maintenance of *status quo ante*; and a stay of execution and/or further proceedings in ELC Case No. 3 of 2015 pending hearing of the appeal.

2. The application is predicated on the grounds on the face of the application, that the 1<sup>st</sup> applicant has been in possession of the building erected on the joint parcels of land since 2001 and has made improvements to the building, which is being used as a church, and for other religious events and gatherings; the appeal has a high chance of success; if the injunction is not granted the appeal will be a mere academic exercise and the same may be rendered nugatory; yet in allowing the application the respondents will suffer no prejudice.
3. In the supporting affidavit of **Grace Wambui Mbutia**, the pastor in charge of the 1<sup>st</sup> appellant, dated 29<sup>th</sup> October 2024, where she reiterated the grounds in support of the application and further deposed that the applicants shall suffer substantial loss and damage unless the order of injunction is granted.
4. In opposing the application, the 1<sup>st</sup> respondent filed a replying affidavit sworn on 12<sup>th</sup> November 2024, on his behalf and that of the 2<sup>nd</sup> respondent. He deposed that the affidavit in support of the application consists of half-truths aimed at misleading

the court; that there were inconsistencies in the testimony  
and the

evidence adduced in the trial court; further, the applicants found a permanent building on the subject property, the only improvements are a plastic water tank placed on the property before the filing of the suit, and temporary structures that were erected during the pendency of the suit.

5. Learned counsel for the applicants in his submissions dated 13<sup>th</sup> February 2025, urged that a stay of execution pending appeal is a discretionary power bestowed upon the court by the law. In support, he cited the case of **Yakub vs. Wesonga (Appeal E006 of 2024) [2024] KEELC 6811 (KLR)**. He further contended that there was a need to preserve the status quo to avoid substantial loss and the likelihood that the appeal would be rendered nugatory.
6. Learned counsel for the respondents filed submissions dated 3<sup>rd</sup> February 2025, arguing that the prayer for an injunction is misplaced. He contended further that if the applicants seek to maintain the status quo along with a stay of execution, they are essentially asking the court to allow them to continue trespassing despite having been granted a 45-day stay by the High Court. Furthermore, the appeal has no chance of success, as the applicants have no arguable grounds for appeal, and the intended appeal will not be rendered nugatory.
7. To succeed in an application under **rule 5 (2)(b) of the Court's Rules**, an applicant has to satisfy the twin principles that are enumerated in many decisions of this Court, namely:

**(i) An applicant must demonstrate that**

***they have an arguable appeal; and***

***(ii) That the intended appeal (or appeal if already filed) will be rendered nugatory if the execution of the decree, order of proceedings is not stayed.***

8. In ***David Morton Silversein vs. Atsango Chesoni [2002] eKLR***, this Court stated that to satisfy the twin principles for an order of stay or an injunction to issue, the applicant must first demonstrate that the appeal or intended appeal is arguable, that is, it is not frivolous and that the appeal or intended appeal, would in the absence of stay, be rendered nugatory.
9. In the instant application, the applicants have not attached a draft memorandum of appeal for the court to have a glimpse at the likely grounds of appeal. We deduce from the parties' affidavits and the judgment that the appellants bought the respondents' property from a third party without any authority from the registered owner, yet the 2<sup>nd</sup> respondent, who is the registered owner, had not authorised the sale. It is not in dispute that the two parties had no dealings whatsoever over the suit property. In the absence of the draft memorandum of appeal and without appearing to interfere with the mandate of the bench that will eventually hear the appeal, based on the available information, we do not think that the applicants have met the first limb of the requirements set above.
10. The appellants having failed to satisfy the first limb, we need not consider the second limb; however, we take note that the

nugatory aspect has not been demonstrated either, since in the event the

appeal succeeds, the claim over the suit property can always be compensated by way of damages.

11. The application thus fails with costs to the respondents.

**Dated and delivered at Nyeri this 28<sup>th</sup> day of November, 2025.**

**S. ole KANTAI**

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**JUDGE OF APPEAL**

**J. LESIIT**

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**JUDGE OF APPEAL**

**ALI-ARONI**

.....  
**JUDGE OF APPEAL**

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

*Signed*  
**DEPUTY REGISTRAR**