

**IN THE COURT OF
APPEAL AT NYERI**

**(CORAM: KANTAI, LESIIT & ALI - ARONI,
JJ.A.) CIVIL APPLICATION NO. E039 OF 2025**

BETWEEN

**JOANINA KANJA.....1ST
APPLICANT DAVID MUTWIRI MUTUERANDU.....
2ND APPLICANT**

AND

**BEATRICE MWENDWA.....1ST
RESPONDENT VENENDETA NCHOGA
MARETE.....2ND RESPONDENT LAND REGISTRAR,
MERU CENTRAL.....3RD RESPONDENT**

*(Being an application for stay of execution against the Judgment of
the Environment and Land Court at Meru (Mboya, J.) delivered on
27th February, 2025*

in

**Meru ELC No. E029 of
2024.)**

RULING OF THE COURT

The application in issue is dated 24th March, 2025 and is brought under **rule 5(2)(b)** of the **Court of Appeal Rules 2022** seeking stay of execution of the ruling dated 27th February, 2025 in Meru Environment and Land Court (“ELC”) case No. E029 of 2024. The application also seeks an order of status quo on the suit property LR Abothoguchi/Gitie/1143 pending determination of the appeal.

This Court in **Principal Secretary, Ministry of Interior and Coordination of National Government & Another vs. Kaguthi &**

11 Others (Civil Application E298 of 2023) [2024] KECA 96

(KLR) (9 February 2024) (Ruling) stated:

“The principles for our consideration in the exercise of our unfettered discretion under rule 5 (2) (b) to grant an order of stay of execution or injunction and stay of proceedings is well settled. First, an applicant has to satisfy that he has an arguable appeal. However, an arguable appeal must not be one that will necessarily succeed. It is an appeal that is not frivolous or idle. Secondly, an applicant must demonstrate that unless an order of stay is granted the appeal or intended appeal would be rendered nugatory. These twin principles were summarized by this court in the case of Stanley Kang’ethe vs. Tony Ketter & Others [2013] eKLR.

12. In considering the twin principles set out above, both limbs must be demonstrated to this court’s satisfaction.”

A brief look at the record shows that the 1st respondent is a daughter to the 2nd respondent and the former received the suit property LR Abothoguchi/Gitie/1143 as a beneficiary of the estate of Marete Imweri and became the registered owner thereof. The 1st respondent thereafter reportedly sold the suit property to the applicants sometime in the year 2015.

The applicants accused the 1st and 2nd respondents of colluding to have them evicted from the suit property through another suit, Githongo ELC Misc. Application E005 of 2023. The record also reflects that there was a ruling dated 16th December,

2022 in another matter, Meru High Court Succession Cause No.
78

of 2001 where the applicants' title to the suit property was cancelled. The applicants tried to appeal out of time at the High Court but their application for leave was dismissed.

The applicants then filed ELC No. E029 of 2024 seeking a declaration that they were the bonafide owners of the property. They also filed an application dated 30th October, 2024 where they sought restraining orders concerning the suit property and an order of stay against the eviction orders in the Githongo case.

In the suit at the ELC, the 2nd respondent raised a challenge on whether the ELC had equal status with the High Court and could not cancel the orders issued in the succession cause No. 78 of 2001. They also stated that the issues were res judicata and could only be tackled before the High Court or the Court of Appeal. It was also argued that the orders of eviction by the lower court at Githongo could not be stayed as they were never appealed.

The ELC delivered the impugned ruling on 27th February, 2025 where it held that the decision of the High Court in High Court Succession Cause No. 78 of 2001 cancelling the title deeds and reverting the property to the original parcel LR Abothoguchi/Gitie/716 was never set aside. The court observed that it would be an absurdity for the ELC to purport to cancel the orders of the High Court. The court held that there was no reasonable cause of action and the suit was misconceived. The suit ELC No. E029 of 2024 was struck out with costs.

As earlier stated, the application currently in issue before this Court seeks stay of execution of the ruling and orders given on 27th February, 2025. The application also seeks an order of status quo against the suit property LR Abothoguchi/Gitie/1143 pending determination of the appeal.

The applicants state that they have an arguable appeal which raises constitutional issues because they were condemned unheard and now face imminent eviction and loss. They state that they have been in peaceful possession of the suit property since 2019 and their eviction would cause irreparable damage and render the appeal nugatory. The applicants have filed a further affidavit sworn on 4th April, 2025 and written submissions dated 9th April, 2025 in support of their application.

The 1st respondent did not respond to the application.

The 2nd respondent filed a replying affidavit, grounds of opposition and submissions all dated 14th April, 2025. The 2nd respondent states that the ELC did not issue eviction orders and the applicants' claim of being evicted from the suit property has no basis. She also states that the suit property as cited in the application does not exist as it was cancelled in Meru HCSC No.78 of 2001, which decision has never been set aside or appealed. The 2nd respondent states that she is a victim of fraud and collusion by the applicants and the 1st respondent and they have rendered her stranded due to endless litigation while they remain on her

property, which they kicked her out of. The 2nd respondent states that the applicants are seeking stay of negative orders.

The Motion was heard on 13th May, 2025 on the Court's virtual platform. Learned counsel **Miss Karwitha** appeared for the second respondent while learned counsel **Mr. Ogada** appeared holding brief for **Mr. Masibo** for the applicants. Both sides relied entirely on their written submissions.

We have considered the Motion, the submissions and the relevant law. As earlier noted, our consideration of the matter involves two principles; namely, whether there is an arguable appeal and whether the intended appeal will be rendered nugatory absent stay.

On the first limb, an arguable appeal is one that is not frivolous. In our view, the applicants have failed to satisfy this Court regarding the arguability of the intended appeal. We find so because the applicants did not state why they did not take up the opportunity to be heard in both Githongo ELC Misc. No. E005 of 2023 and in Meru HCSC No.78 of 2001. It is undisputed that those two suits have valid court orders in force which were never appealed nor challenged in any way by the applicants. Therefore, this Court is unable to find prima facie evidence of an arguable appeal and this limb fails.

Having failed to demonstrate that there is an arguable appeal we need not consider the second limb of the principles

that apply in

an application like this one. We may say in passing that there has not been eviction of the applicants or a threat to evict. The appeal would not be rendered nugatory.

The Motion fails and is dismissed with costs to the 2nd respondent.

Dated and delivered in Nyeri this 28th day of November, 2025.

S. ole KANTAI

.....
JUDGE OF APPEAL

J. LESIIT

.....
JUDGE OF APPEAL

ALI - ARONI

.....
JUDGE OF APPEAL

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

Signed
DEPUTY REGISTRAR