



REPUBLIC OF KENYA
IN THE ENVIROMENT AND LAND COURT AT THIKA
CIVIL APPEAL NO. E016 OF 2025

CATHERINE MUGI.....
.....APPELLANT

VERSUS

JOSEPH KARIUKI KAROKI.....
.....DEFENDANT

RULING

1) This Ruling is in respect of the Notice of Motion Application dated 28/02/2025 brought under Section 1A, 1B and 3A of the Civil Procedure Act, Order 42 Rule 6 of the Civil Procedure Rules and Articles 50 and 159 (2) (d) of the Constitution and all enabling provisions. Th Applicant seeks the following:

1. Spent.
2. THAT pending the hearing of this application interpartes and/or the further orders of Court, this Honorable Court be pleased to grant interim and/or temporary orders of stay of execution of the Ruling and order of the Honorable S. Atambo issued on 28th January 2025 in **Thika CM Misc Civil Application No. E090 of 2021.**

3. THAT this Honorable Court be pleased to grant orders of stay of execution of the Ruling and order of the Honorable S. Atambo issued on 28th January 2025 in determination of the appeal herein.
4. THAT the costs of this application be provided for.
- 2) The Ruling delivered by the lower Court was that the Respondent (Appellant herein) was cited for contempt and was to be immediately committed to civil jail for a term of six months until she purges her contempt and comply with the orders issued by the Court on 27/01/2023.
- 3) At the same time the lower Court issued an order that the Respondent and any other person living or acting on her behalf to be immediately evicted from the suit property **Thika Municipality Block 10/325** at her own cost. That aggrieved with the Ruling, the Applicant has now preferred this Appeal.
- 4) The Applicant/Appellant contends that it is therefore, in the interest of justice that this Court grants orders of stay of execution of the Ruling and the orders issued on 28/01/2025 in **Thika CM MISC CIVIL APPLICATION No. E090 OF 2021** pending the hearing and determination of the Appeal.
- 5) The Counsel for the Respondent filed Grounds of Opposition dated 17/07/2025 and stated that the Respondent is now Deceased and therefore the Application is an abuse of the Court process and that the prayers sought cannot be granted since the Respondent is deceased.

- 6) The Motion was canvassed by way of written submissions. Counsel for the Applicant anchored their submissions on three cases and also they submitted that the Appellant was not a party in the lower Court matter which involved, **Joseph Kariuki Karoki vs Stanley Nguma CMCELC Misc. Application No. E090 of 2021.**
- 7) They relied on the following cases which all addresses the cardinal principles for consideration that must be in place for a finding of contempt of Court to hold. These are **Nairobi HCCC No. 2083 of 2000 David Njoroge Kinuthia & Others vs Gnanjivan Screw & Fasteners Ltd & Others, Court of Appeal in Nai Civil Appeal No. 336 of 2013 John Mwangi Muhia & Others vs Justus Gituma t/a Dona Snacks & Anor, Garissa ELC Case No. E02 of 2022 Muhayidin Kali vs Fatuma Hussein Hassan, Beatrice Wanjiku & Anor vs AG & Anor (2012)eKLR, Butt vs Rent Restriction Tribunal Court of Appeal at Nairobi Civil Application No. Nai 6 of 1979 and Nyeri HCCA No 19 of 2022 Charles Mwangi Gitundu vs Chares Wanjohi Wathuku.**
- 8) Counsel contended that the Applicant has an arguable Appeal with a high chance of success and ought to be allowed to first ventilate the issues raised therein. Counsel reiterated that if the Ruling of the lower Court is not stayed, the Applicant's will suffer since the Court had already sentenced her to serve six months in Civil jail till she purges

the contempt, an eventuality liable to defeat the purpose of the Appeal and rendering it an academic exercise.

9) The Applicant/Appellant also filed supplementary submissions dated 19/08/2025 and pointed the Court to the fact that the Respondent's Counsel had alleged that the Respondent is deceased and had filed Grounds of Opposition. That it is only after the Respondent's Counsel filed a List of Documents dated 22/07/2025 that he attached the Death Certificate which showed that the Respondent died on 16/04/2024. This being the case the Applicant sought to withdraw the Application.

10) It is unfortunate that Advocates who are officers of this Honorable Court choose to play games with people's lives. If the Respondent had died on 16/04/2024 then the Ruling in the lower Court is null and void *ab initio*.

11) I mark this Application as withdrawn for having been filed against a deceased person infact it was an exercise in futility.

It is so ordered.

**DATED, SIGNED AND DELIVERED VIRTUALLY AT THIKA THIS
3RD DAY OF DECEMBER, 2025 VIA MICROSOFT TEAMS.**

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**MOGENI J
JUDGE**

In the presence of:

Appellant - Absent

Ms. Wairimu holding brief for Mr. Ng'ang'a for the Respondent

Mr. Melita - Court Assistant

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MOGENI J
JUDGE

ORIGINAL