

**REPUBLIC OF KENYA**

**IN THE ENVIRONMENT AND LAND COURT AT NYAHURURU**

**ELC APPEAL NO. 40 OF 2018**

**KIMARU NJOROGE.....1<sup>ST</sup>**

**APPELLANT**

**JANET NJAMBI NJOROGE.....2<sup>ND</sup> APPELLANT**

**VERSUS**

**MARY MUGURE KAMAU.....**

**RESPONDENT**

**RULING**

**1.** Before me is a notice of motion application dated 10.9.2025 filed by the appellants seeking orders that ;

**“a) There be a stay of execution of all execution proceedings pertaining to LR No. Nyandarua/Lesirko/137, including warrants for eviction, pending the hearing and determination of the instant application.**

**b) That the warrants of execution issued in the instant appeal file be nullified for**

**having been issued unprodurally and unlawfully.**

**c) That the costs of this application be provided for”.**

**2.** The application is premised on grounds that;

The respondent took out warrants on 8.8.2025 to give vacant possession which warrants are unlawful and irregular. The 2<sup>nd</sup> appellant has sworn a supporting affidavit contending that the auctioneers visited her home with the intention of demolishing her house, but was granted security by the police.

She avers that the appeal herein arose out of the judgment delivered in MCCC 368 OF 2005. That though the appeal was not successful, the court did not issue any eviction orders.

**3.** That after the dismissal of the appeal, she made an application before the trial court for a declaration that the decree issued therein was incapable of execution, of which a ruling was delivered on 14.2.2024 allowing the application. She avers that the aforementioned ruling

has not been challenged by way of an appeal or a review. That the legal representatives of the respondent then filed Misc. Application no. E015 OF 2025 seeking orders for her eviction. That she has in turn filed a case of adverse possession in respect of the suit land.

4. In opposition thereof, the respondent filed a replying affidavit dated 2.10.2025 where she has given the history of the dispute. That in the case P.M.C.C. 368 OF 2005, judgement was entered on 28.5.2009 in favour of her late mother whereby a permanent order of injunction was issued restraining the appellants from occupying the suit land. That the appellant was dissatisfied with the judgment, hence this appeal which was dismissed. That the appellants lodged an appeal in Civil Appeal no. 51 of 2019, but the same has since been withdrawn.

5. That as the appellants are unlawfully trespassing on the suit land, the respondent commenced execution proceedings by way of filing Misc. Application No. 15 of 2025. That after the appellant was served with the documents in the miscellaneous file, she lodged the

Originating Summons in Nyandarua ELC OS. E025 of 2025 claiming adverse possession in respect of the suit land. The respondent terms the appellant as a vexatious litigant who is not ready to see the matter end.

**6.** On 2.10.2025, the court gave directions for the application to be heard by way of written submissions, of which the applicant was to file and serve their submissions by 16.10.2025, while the respondent was to file and serve her submissions by 23.10.2025. There is no evidence of service of the submissions of the applicant and there was no order for the applicant to file a further affidavit, which in any event has not been served. Thus, the two documents are hereby disregarded by the court. As for the respondent she did not file any submissions.

**7.** I have considered the arguments proffered herein in the application dated 10.9.2025 and the response filed thereof. There is no controversy that this appeal suit was filed to challenge the judgment delivered on 25.5.2009 in Nyahururu P.M.C.C. 368 OF 2005, in which the claim of

the current respondent who was the plaintiff was allowed. The said claim was set out in the body of the judgment as follows;

**“1) That an order of Permanent injunction restraining the defendants by themselves, members of the families, agents, servants, employees, proxies or otherwise howsoever in any way interfering/dealing with L.R Nyandarua/Lesirko/137.**

**2) A declaration that the defendants have no legal right to occupy any portion of L.R Nyandarua/Lesirko/137 and for their eviction/ejectment therefrom.**

**3) An order for the exhumation of the body of Njoroge Kimaru (deceased) from L.R Nyandarua/Lesirko/137 and for its disposal on the deceased's and/or defendant's parcel of land if any, and/or alternatively in the public cemetery.**

**4) Any other relief the court may deem fit to grant.**

**5) Costs of the suit with interest”.**

**8.** This appeal was dismissed through the judgment delivered by this court on 10.4.2019. The appellants apparently filed an application dated 5.9.2023 in the suit C.M CC 368 OF 2005 to have the decree declared as stale in terms of the provisions of the Limitations of Actions Act. That application was allowed vide a ruling delivered on 14.2.2024.

**9.** Meanwhile, the respondent herein filed a miscellaneous suit no 15 of 2025 before this court for the eviction of the appellants, while the appellants have apparently filed a case for adverse possession in Nyandarua ELC NO.25 OF 2025. It is clear beyond peradventure that the parties herein have embarked on filing myriad suits to assert their rival interests. In the case of **Republic v Paul Kihara Kariuki, Attorney General & 2 others Ex parte Law Society of Kenya [2020] eKLR**, it was

stated that multiplicity of suit is unnecessary and impermissible.

**10.** In the case at hand, the appeal was dismissed, paving way for the enforcement of the decree before the trial court. The subsequent events including the ruling delivered in the case 368 of 2005 ought to be litigated through the hierarchical systems of the court and not through parallel or multiple proceedings. Thus, the orders sought for stay of execution cannot be granted as framed in view of the fact that a STAY connotes that something is pending, yet there is no appeal herein, the same having been dismissed. In that regard, the application is hereby dismissed. However, on the same breadth, no execution proceedings can be undertaken in this none existent appeal suit. Thus, the warrants issued in this suit are declared as invalid. Each party is to bear their own costs of the application.

**DATED, SIGNED AND DELIVERED AT NYAHURURU  
THIS 3<sup>RD</sup> DAY OF DECEMBER 2025 THROUGH  
MICROSOFT TEAMS.**

**LUCY N. MBUGUA**

**JUDGE**

**In the presence of:**

Vanessa - Court Assistant

Gakuhi Chege for Applicant

Ms. Mwangi for Respondent

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