



Gitonga v Ndungu (As the Chairperson of Urutagwo Mwiruti Women Group) & another (Environment and Land Appeal E050 of 2024) [2025] KEELC 8640 (KLR) (11 December 2025) (Ruling)

Neutral citation: [2025] KEELC 8640 (KLR)

**REPUBLIC OF KENYA
IN THE ENVIRONMENT AND LAND COURT AT NAIROBI
ENVIRONMENT AND LAND APPEAL E050 OF 2024
JG KEMEL, J
DECEMBER 11, 2025**

BETWEEN

ANDREW GITONGA APPELLANT

AND

ANN WAIRIMU NDUNGU (AS THE CHAIRPERSON OF URUTAGWO MWIRUTI WOMEN GROUP) 1ST RESPONDENT

THE LAND REGISTRAR 2ND RESPONDENT

(In respect of the 1st Respondent application dated 24/2/25 and the Appellant's application dated 4/3/25)

RULING

1. Vide the application dated 24/2/25, the 1st Respondent urged the court for two prayers;
 - a. A stay of proceedings pending the determination of this application
 - b. The court to strike out the appeal as it is res subjudice on account of a pending appeal before the COA in CA No E831 of 2022 – John Mbugua Boro, Nicholas Mati, Josphat Michira Mogaka & George Wambiri Ndamaiya (suing for and on behalf of Emmaus Welfare Society Vs Ann Wairimu Ndungu [as the Chairperson of Urugwo Mwiritu Women Group)
 - c. The Court to strike out the appeal as it is vexatious, annoying, devoid of bona fides, and is generally a sham and a waste of time and resources.
2. The 1st Respondent argues that the parties are involved in litigation in CA NO. E831 of 2022 under the same title. The appeal originates from this court's decision in ELC No 60 of 2015, where the court dismissed the Plaintiff's case, leading to the filing of the appeal.



3. Earlier, Obaga J, in his ruling in ELC 60 of 2025, held that Andrew Gitonga is a member of Emmaus Welfare Society and his interests are represented by the plaintiffs, and that his joinder to the suit was unjustifiable.
4. In an effort to escape the doctrine of res judicata, Andrew Gitonga, the appellant in this appeal, filed a new suit in the Subordinate Court in his own name against the 1st Respondent, claiming Plot No LR 6845/67 in MCELC 278 of 2022. Following an application by the 1st Respondent, the suit was struck out on the grounds of res judicata in relation to ELC 60 of 2015. Agreeing with the decision of the subordinate court, Andrew Gitonga lodged this current appeal.
5. Since the two appeals involve the same parties and subject matter, allowing concurrent appeals in the Court of Appeal and in ELC poses a significant risk of conflicting outcomes and the same issue, thereby causing embarrassment to the administration of justice.
6. It is argued that section 6 of the *Civil Procedure Act* prevents the court from proceeding with a trial where the issue in question is directly and substantially the same as in a previous case involving the same parties or parties litigating under the same title.
7. The Appellant in response admitted MCELC No E278 of 2022 – Andrew Gitonga Vs Anne Wairimu Ndungu (chairperson of Urugwo Mwiruri Women & Land Registrar Claiming title for plot Nos 123, 124 and 125 respectively. That on dismissal of the suit, he has now filed the instant appeal challenging the finding of the trial court as to subjudice given that the properties in dispute are not the same
8. Regarding the COA No E831 of 2022 he stated that he was not aware of the said appeal since he is not a party therein.
9. In this motion, the appellant sought an order to stay the execution of the trial court's orders and decrees issued on 25/3/24, pending the hearing and determination of the instant appeal. He states that the 1st Respondent has extracted the decree in the sum of Kshs 67,400/- in the subordinate court and instructed an auctioneer who invaded his residence, purporting to execute the decree issued without serving the proclamation order or any notice upon him regarding the impending execution. Indeed, warrants of attachment have been issued, and the respondent threatens to levy execution against the applicant.
10. In opposing the application the 1st Respondent stated that the application is res subjudice on account of another similar suit in ELC 60 of 2015
11. I have read and considered the submissions of the parties.
12. It is not in dispute that the parties are litigating in various forums with arguments and counterarguments as to whether the instant appeal and the appeal pending in the Court of appeal subjudice.
13. Section 6 of the CPA provides as follows;

“No court shall proceed with the trial of any suit or proceeding in which the matter in issue is also directly and substantially in issue in a previously instituted suit or proceeding between the same parties, or between parties under whom they or any of them claim, litigating under the same title, where such suit or proceeding is pending in the same or any other court having jurisdiction in Kenya to grant the relief claimed.



Explanation.—The pendency of a suit in a foreign court shall not preclude a court from trying a suit in which the same matters or any of them are in issue in such suit in such foreign court.

14. Regarding the prayer to strike out the appeal, it is my view that the authority to strike out a suit must be exercised with caution. To allow the parties the chance to pursue the appeal in the appellate court, it would serve the cause of justice to stay this suit pending the conclusion of the appeal in COA E831 of 2022. This helps prevent the risk of conflicting court decisions that could embarrass the administration of justice.
15. Having stayed the proceedings in this appeal, I find that granting a stay of execution is the appropriate remedy in the circumstances.
16. Final orders for disposal In the end, the applications dated the 4/3/25 and 24/2/25 are allowed as follows;
 - a. The proceedings in this appeal are stayed pending the hearing and determination of the CoA No E183 of 2022.
 - b. Stay of execution is granted on the following conditions: the appellant must deposit the sum of Kshs 67,400/- in court within 15 days; in default, the stay orders shall lapse, and the 1st Respondent shall be at liberty to proceed with execution.
 - c. Each party to meet the costs of their applications.
17. Orders accordingly

DELIVERED, DATED AND SIGNED AT NAIROBI THIS 11TH DAY OF DECEMBER 2025 VIA MICROSOFT TEAMS.

J. G. KEMEI

JUDGE

Delivered online in the presence of;

N/A for the Appellant

Mr Outa for the Respondents

C/A - Ms Yvette Njoroge

